



AGENDA REPORT

Meeting Date: February 3, 2015
Item Number: D-8
To: Honorable Mayor & City Council
From: Laurence S. Wiener, City Attorney
Subject: AMENDMENT NO. 8 TO AN AMENDED AND RESTATED EMPLOYMENT AGREEMENT BETWEEN THE CITY OF BEVERLY HILLS AND BYRON POPE
Attachments: 1. Amendment No. 8 to an Amended and Restated Employment Agreement

INTRODUCTION

Pursuant to the City Clerk's employment agreement, the City Council reviews the compensation and performance of the City Clerk annually. Following the reviews, the City Council may approve changes to compensation and other terms and conditions of employment.

DISCUSSION

The terms and conditions of Byron Pope's employment by the City as City Clerk are specified in an employment agreement between the City and Mr. Pope. The agreement provides that the City will review compensation and performance annually and may grant increases or make mutually agreeable changes to the agreement. The City Council recently concluded its annual review for 2014. As a result of that review, the proposed eighth amendment to the employment agreement provides for a one percent (1%) cost of living increase in base salary, which equals approximately \$1,450 annually, effective April 1, 2014, and performance pay in the amount of five percent (5%) of base salary, which equals approximately \$7,250.

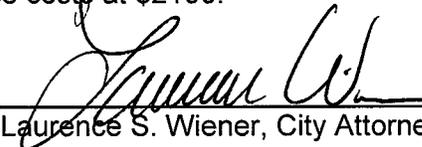
Additionally, two other changes have been made to the employment agreement. First, the agreement has been amended to shift the employee share of PERS retirement benefit costs from the City to Mr. Pope. This will result in Mr. Pope, rather than the City, paying to PERS eight percent (8%) of his salary. Concurrently, the City will increase Mr. Pope's base salary by eight percent (8%), which will offset the increased cost to Mr. Pope and will offset the majority of the savings to the City. (The City will continue to realize some savings due to the elimination of the "PERS on PERS" benefit.)

Second, the medical, dental and vision insurance benefits provided to Mr. Pope have now been capped at \$2100 in a manner similar to other executive employees.

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FISCAL IMPACT

If approved, Amendment No. 8 to the Amended and Restated Employment Agreement will provide the City Clerk with a cost of living adjustment of approximately \$1,450 to his base salary, and a one-time payment of approximately \$7,250. Additionally, Mr. Pope will receive an eight percent (8%) increase to his base salary which will be offset by shifting from the City to Mr. Pope the employee share of PERS costs, which also equals eight percent (8%) of his salary. Finally, the Amendment caps the City's exposure to increased medical, dental and vision insurance costs at \$2100.



Laurence S. Wiener, City Attorney

Attachment 1

AMENDMENT NO. 8 TO AN AMENDED AND
RESTATED EMPLOYMENT AGREEMENT BETWEEN
THE CITY OF BEVERLY HILLS AND BYRON POPE

This Amendment No. 8 (“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”), as previously amended, 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 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; an Amendment No. 2 to the Agreement executed on June 16, 2009 and identified as Agreement No. 231-09; an Amendment No. 3 to the Agreement executed on February 15, 2011 and identified as Agreement No. 35-11; an Amendment No. 4 to the Agreement executed on April 21, 2011 and identified as Agreement No. 137-11; an Amendment No. 5 to the Agreement executed on November 15, 2011 and identified as Agreement No. 463-11; an Amendment No. 6 to the Agreement executed on February 21, 2012 and identified as Agreement No. 54-12; and an Amendment No. 7 to the Agreement executed on November 19, 2013 and identified as Agreement No. 468-13.

B. In the Agreement, City and Employee agreed to an annual review and performance evaluation by the City Council.

C. Following such review and evaluation and without limitation to the continuing nature of such communications between the City Council and Employee, the parties desire to amend certain terms and conditions of the Agreement, as provided in this Amendment, and to have all other terms and conditions remain in full force and effect.

D. The parties also desire to amend the terms of the Medical Insurance Benefits, adopting a total monthly benefit cafeteria cap of \$2,100, and to amend the terms of the Retirement Plan, eliminating employer paid member contributions and the "PERS-on-PERS" benefit, these changes being similar to changes adopted for other employees.

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

Section 1. Section 4, Paragraph A, Sub-paragraph (1), titled "Base Salary," of the Agreement, shall be amended to read in its entirety as follows:

"(1) Base Salary. Effective April 1, 2014, Employer shall pay Employee a base salary of One Hundred Forty-Six Thousand Two Hundred Ninety-One and 22/100 Dollars (\$146,291.22) annually, subject to legally permissible or required withholding, prorated and paid on Employer's normal paydays. Effective on the first day of the first full pay period following February 1, 2015, Employer shall pay Employee a base salary of One Hundred Fifty-Seven Thousand Eight Hundred Seventy-Eight and 64/100 Dollars (\$157,878.64) annually, subject to legally permissible or required withholding, prorated and paid on Employer's normal paydays. Employee's salary is compensation for all hours worked. Employee shall be exempt from the overtime pay provisions of California law (if any) and federal law."

Section 2. The City Council has evaluated Employee's performance on the basis of the goals and objectives identified by the City Council pursuant to the program established in Section 4, Paragraph A, Sub-paragraph (2), titled "Salary Review and Performance Pay," of the Agreement. Based on its 2014 annual review, Section 4, Paragraph A, Sub-paragraph (3), titled "2013 Annual Performance Review" is hereby revised to provide performance pay of five percent (5%) of Employee's annual base salary and to read as follows:

"(3) 2014 Annual Performance Review. Based on its 2014 annual performance review pursuant to Section 4, Paragraph A, Sub-paragraph (2) above, Employer agrees to pay Employee performance pay of Seven Thousand Two Hundred Forty-Two and 14/100 Dollars (\$7,242.14), in a single lump sum, subject to legally permissible or required withholding, payable on or before the next payday on which the City's Payroll Division can process the payment using normal processing procedures. The performance pay is intended as special compensation, in addition to the salary provided in Section 4, Paragraph A, Sub-paragraph (1) of the Agreement and is paid for superior performance of normally required duties performed during normal hours of employment. However the payment will only be included for purposes of Public Employees' Retirement System contributions and benefits to the extent permitted by law."

Section 3. Section 4, Paragraph B, Sub-paragraph (3)(a), titled "Medical Insurance," Sub-Paragraph (3)(b), titled "Dental Insurance" and Sub-paragraph (3)(f), titled "Optical Insurance" of the Agreement are deleted in their entirety and the following is substituted under Section 4, Paragraph B, Sub-Paragraph (3), titled "Group Insurance Programs:"

"(a) Medical Insurance Benefit and Flexible Benefits (Cafeteria) Plan. Employer shall contribute the PERS statutory minimum toward the cost of providing medical insurance on behalf of each participant in this program. A participant is defined as 1) any current employee and dependents, 2) an enrolled retiree and dependents, and 3) a surviving annuitant.

"In addition, in order to enhance the City's Flexible Benefits (Cafeteria) Plan, as implemented January 1, 2010, Employer shall provide a monthly benefit contribution (in addition to the PERS statutory minimum contribution to medical insurance for all participants) to Employee to use to pay for Employee selected I.R.S. qualified benefits as

detailed in this Sub-section. The amount of the monthly benefit will be equal to the combined cost of the PERS Care family medical (minus statutory minimum contribution being made by the City), the enhanced family dental and the enhanced family vision plans as of January 1, 2015 through calendar year 2015 (ending December 31, 2015). (Where more than one plan is offered in a particular category of coverage, "enhanced" designates the plan with the greatest premium.) Effective January 1, 2016, the monthly benefit, including the PERS Statutory minimum, will be \$2,100.00 for the purchase of the eligible medical, dental and optical insurance benefits.

"If after selection of the various I.R.S. qualified benefits as detailed in this Sub-section, Employee has benefit contribution left over, Employee shall receive, in a taxable cash payment added to his bi-weekly payroll, that amount as determined by the difference between the Employee's selected benefits and the monthly benefit amount, subject to a maximum limit of \$600. If Employee "spends" more than what is allocated by Employer in the Flexible Benefits (Cafeteria) Plan monthly allotment, the difference shall be deducted from Employee's pay on a bi-monthly basis. Terms will be as specified in the applicable plan document(s) and any conflict will be resolved in favor of the plan document.

"The various I.R.S. qualified benefits offered by the City are as follows:

"(i). Medical Insurance. Employer shall provide a medical insurance program to Employee. The cost of the coverage may vary, contingent upon the number of dependents claimed. Insurance coverage is effective the first day of the month following the 30 day waiting period or as otherwise provided in the applicable plan document or rules and regulations of the provider(s).

"In the event Employee is on leave without pay as a result of an illness or injury and has exhausted 50% of vacation leave and all sick leave credit, the Employer shall pay Employee's applicable cafeteria plan contribution to the limit of one month's coverage for each full year of Employee's City services.

"Employer shall pay the applicable cafeteria plan contribution amount for Employee and dependents, if any, during the continuous periods of Employee's absence if caused by an injury or job related illness while on duty. The schedule of payment shall be at the rate of one month's premium contribution for each year of service or major portion thereof.

"The City's present medical insurance plan is the CalPERS medical insurance plan.

"(ii). Dental Insurance. Employer shall provide a choice of one or more dental insurance plans to Employee. The cost of the coverage may vary, contingent upon the number of dependents and/or spouse or domestic partner enrolled and the level of plan services.

"(iii). Optical Insurance. Employer shall provide one or more optical insurance plans to Employee. The cost of the coverage may vary, contingent upon the number of dependents and/or spouse or domestic partner enrolled."

Section 4. Section 5, titled "Retirement Plan," of the Agreement shall be amended to read in its entirety as follows:

"(5) Retirement Plan. Employee shall be enrolled in Employer's retirement plan with the California Public Employees' Retirement System ("PERS"), subject to the applicable benefit formula, terms and conditions provided in the contract between Employer and PERS and also subject to applicable law and regulations. As a "Classic Member," as defined by PERS and Public Employees' Pension Reform Act of 2013 (PEPRA), Employee will pay his 8% miscellaneous member contribution effective on the first day of the first full pay period following February 1, 2015.

Section 5. Except as expressly amended by this Amendment No. 8, all of the provisions of the Agreement, as amended by Amendment Nos. 1, 2, 3, 4, 5, 6 and 7 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 February, 2015, at Beverly Hills, California.

EMPLOYEE

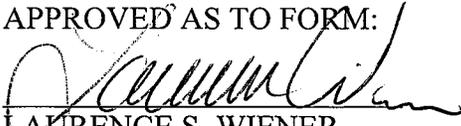
BYRON FOPE
CITY OF BEVERLY HILLS
A Municipal Corporation

LILI BOSSE
Mayor of the City of Beverly Hills,
California

ATTEST:

(SEAL)
LOURDES SY-RODRIGUEZ
Deputy City Clerk

APPROVED AS TO FORM:

A handwritten signature in black ink, appearing to read "Laurence S. Wiener", written over a horizontal line.

LAURENCE S. WIENER
City Attorney