



AGENDA REPORT

Meeting Date: June 8, 2015

Item Number: E-10

To: Honorable Mayor & City Council

From: Laurence S. Wiener, City Attorney

Subject: AMENDED AND RESTATED EMPLOYMENT AGREEMENT BETWEEN THE CITY OF BEVERLY HILLS AND BYRON POPE.

Attachments: 1. 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.

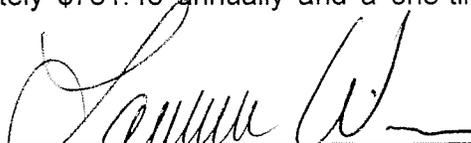
DISCUSSION

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. Following this year's review, the Amended and Restated Employment Agreement provides for a half of one percent (0.5 %) cost of living increase in base salary, which reflects the change in the Consumer Price Index for all urban consumers in the Los Angeles Metropolitan Area. The Amended and Restated Employment Agreement also provides for performance pay in an amount equal to five percent (5%) of base salary.

No other substantive changes have been made to the Employment Agreement.

FISCAL IMPACT

If approved, the Amended and Restated Employment Agreement will provide the City Clerk with a base salary increase of approximately \$731.46 annually and a one-time payment of \$7,893.93.



Laurence S. Wiener, City Attorney

Attachment 1

AMENDED AND RESTATED EMPLOYMENT AGREEMENT

This Amended and Restated Employment Agreement ("Agreement") is made as of June ____, 2015; is entered into by and between the City of Beverly Hills, a California municipal corporation, ("Employer" or "City") and Byron Pope, an individual ("Employee"); and fully amends, restates and replaces in its entirety that Employment Agreement ("Employment Agreement"), dated September 2, 2008, identified as Agreement No. 378-08, and thereafter amended by Amendment No. 1, identified as Agreement No. 514-08; Amendment No. 2, identified as Agreement No. 231-09; Amendment No. 3, identified as Agreement No. 35-11; Amendment No. 4, identified as Agreement No. 137-11; Amendment No. 5, identified as Agreement No. 463-11; Amendment No. 6, identified as Agreement No. 54-12; Amendment No. 7, identified as Agreement No. 468-13; and Amendment No. 8, identified as Agreement No. 35-15. Upon execution of this Agreement by the City and Employee, such Agreement Number 378-08, as amended, shall be superseded and of no further force or effect.

RECITALS

- A. The City Clerk is an appointive officer of the City of Beverly Hills, established pursuant to California law and appointed by the City Council.
- B. The Office of the City Clerk is established pursuant to Beverly Hills Municipal Code ("BHMC") § 2-3.1001. The City Clerk administers the office and is responsible for its functions.
- C. Employee was employed in the Office of the City Clerk as Deputy City Clerk and as Acting City Clerk, prior to appointment as City Clerk.
- D. Employer appointed Employee and Employee accepted appointment as City Clerk, as provided in the original employment agreement (92-06).
- E. Employee represents that he has the requisite specialized skills, training, certifications, licenses, and authorizations and is otherwise qualified to serve as City Clerk.
- F. Employer and Employee wish to continue their Employment Agreement setting forth the rights and obligations of the parties and superceding all prior negotiations, discussions or agreements. The parties intend for their agreement to continue the employment relationship without interruption.

NOW, THEREFORE, for and in consideration of the mutual covenants and conditions herein contained, Employer and Employee agree as follows:

1. COMMENCEMENT OF EMPLOYMENT. The City Council appointed Employee and Employee accepted appointment as City Clerk, effective December 23, 2005, subject to the terms and conditions of this Agreement. The employment relationship between Employer and Employee continues without interruption.

2. DUTIES AND AUTHORITY. Employee shall exercise the full powers and perform the duties of the position of City Clerk, as set forth in the laws of the State of California; the BHMC; all other applicable laws, rules, regulations and procedures; and the applicable job description (if any), as they now exist or as they may hereafter be amended. Employee shall exercise such other powers and perform such other duties as the City Council or its designee may from time to time assign.

3. EMPLOYEE'S OBLIGATIONS. Employee shall devote his full energies, interest, abilities and productive time to the performance of this Agreement, and utilize his best efforts to promote the City's interests. Employee shall not engage in any activity, consulting service or enterprise, for compensation or otherwise, which is actually or potentially in conflict with or inimical to, or which materially interferes with, his duties and responsibilities to Employer. Employee shall obtain prior authorization from the City Council or designee for any outside employment, consulting, teaching or enterprise.

4. SALARY AND BENEFITS.

A. Salary and Performance Pay.

(1) Base Salary. Effective April 1, 2015, Employer shall pay Employee a base salary of \$158,610.10 (One Hundred Fifty-Eight Thousand Six Hundred Ten and 10/100 Dollars) 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.

(2) Salary Review and Performance Pay. Employer, by its City Council, will conduct an annual salary review. The City Council may, but is not required to, consider or approve cost of living increases, bonuses, incentives, merit increases, performance pay or other compensation enhancements in conjunction with the annual salary review. Employee will request and schedule such reviews, as appropriate, pursuant to City Council agenda procedures or as otherwise directed by City Council. Performance pay, if any, shall be in an amount as determined by the City Council, up to and including 10% of the annual base salary, based on the level of completion of goals identified by the City Council.

(3) 2015 Annual Performance Review. Based on its 2015 annual performance review, pursuant to Section 4, Paragraph A, Sub-paragraph (2), above, Employer agrees to pay Employee performance pay of Seven Thousand Eight Hundred Ninety-Three and 93/100 Dollars (\$7,893.93), 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.

(4) Management Compensation Pay. Employee shall be entitled to special Management Compensation Pay at the rate of \$450 per month, pro-rated and paid on Employer's normal paydays.

B. Employment Benefits. In addition to base salary and performance pay, if any, Employer shall provide to Employee the following benefits:

(1) Holidays.

(a) Regular Holidays. Employee shall be entitled to the following paid holidays if Employee worked the regularly assigned work period the day before and the day after the holiday or was absent on authorized paid leave during said period:

New Year's Day	January 1
Martin Luther King Day	3rd Monday in January
President's Day	3rd Monday in February
Memorial Day	Last Monday in May
Independence Day	July 4
Labor Day	First Monday in September
Veteran's Day	November 11
Thanksgiving Day	Fourth Thursday in November
Day after Thanksgiving	Fourth Friday in November
Christmas Day	December 25

If the following holidays (January 1, July 4, November 11, and December 25) fall on a Saturday, the preceding Friday shall be considered the holiday; if the holiday falls on Sunday, the following Monday shall be considered the holiday.

(b) Personal Holidays. Employee shall be entitled to two additional paid holidays each calendar year. Said holidays may be taken at Employee's discretion. Said holidays are non accruable and shall not be paid for if not taken.

(2) Vacation, Sick and Other Leave.

(a) Vacation. Employee shall accrue vacation time at the rate of 4.60 hours each biweekly pay period, the equivalent of 120 hours annually. When a

holiday falls within an employee's vacation leave, the leave time shall be extended or credited by the amount of the holiday time. Employee may accumulate accrued vacation up to a maximum of 240 hours. The current year accrual shall not be included in the accumulation. If Employee has 240 hours or more of vacation leave at the end of any calendar year, upon Employee's request, Employee can receive cash payment for up to 80 vacation hours earned but not taken during the calendar year.

(b) Sick Leave. Employee shall accrue sick leave at the rate of 8 hours for each month of employment. Sick leave may be used immediately during any period of illness.

(i) Job Connected Disability. Except as provided herein, Employee shall be entitled to use accumulated sick leave during any period for which he is entitled to receive temporary disability indemnity under Division 4 (Section 3201, et seq.) of the Labor Code of the State. If Employee is entitled to receive such temporary disability indemnity, Employee may elect (for a period not to exceed twelve (12) months after he first makes such election) to use as much of his accumulated sick leave or accumulated vacation, so when added to his disability indemnity will result in a payment to him of not more than full base pay or wage.

(ii) Sick Leave Incentive. Employee, if he accrues 72 hours or more of sick leave in any payroll year, may convert up to 24 hours of sick leave to cash during the month of January of the following year. The limit of payment shall be 24 hours per year.

(c) Bereavement Leave. Employee may use 40 hours of bereavement leave, per calendar year, in the event of the death of a family member, herein defined as a spouse, registered domestic partner, parent, brother, sister, child, grandparent, or in-law of Employee. In the event Employee needs additional time off for this leave, he may use up to 40 hours of sick leave per calendar year.

(d) Witness and Jury Leave. If Employee is required to serve as a witness pursuant to a lawful subpoena in any judicial or quasi judicial proceeding or is required to serve as a juror, Employee shall be allowed time off without loss of pay to perform such duties. However, Employee shall not be allowed time off without loss of pay if Employee is a party to the matter for reasons other than actions within the scope of Employee's current or past public employment. All fees to which Employee is entitled by law for such service shall be paid (less transportation allowance, if any) to the City.

(e) Administrative Leave. Employee will be granted 120 hours of Administrative Leave each calendar year. Administrative Leave as provided herein is non cumulative between calendar years. At the end of each calendar year, upon Employee request, Employee will receive cash payment for up to 80 hours administrative leave earned but not taken as time off during the calendar year.

(f) Leave Scheduling. Vacation and other paid leaves susceptible to advance scheduling shall be scheduled with the City Council in advance.

(3) 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 dependants, 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 the statutory minimum contribution being made by the City), enhanced family dental and the enhanced family vision plans as of January 1, 2015 through the 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 the 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 the 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 coverage may vary, contingent upon the number of dependants claimed. Insurance coverage is effective the first day of the month following the 30 day waiting period or 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 coverage may vary, contingent upon the number of dependants 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 coverage may vary, contingent upon the number of dependants and or/spouse or domestics partner enrolled.

(b) Life Insurance. Employee shall be entitled to a \$300,000.00 (Three Hundred Thousand and No/100 Dollars) term life insurance policy under the City's life insurance program. The full premium for such policy shall be paid for by the City under the life insurance program of its choosing. Employee shall have the option to purchase additional life insurance at the City's unit cost, if available. Employee shall name the beneficiary of the life insurance policy.

(c) Long-Term Disability Insurance. Employer shall contract for a long-term disability insurance plan. Employee shall be required to participate in the long-term disability plan at his own expense. The disability plan will pay two-thirds (66%) of the Employee's base pay, up to a maximum of Fifteen Thousand Dollars (\$15,000.00) per month. The disability wait period shall be thirty (30) days.

(d) Extended Disability Pay and Benefits Continuation. Employer may provide to Employee base pay and benefits (less legally required deductions) during a thirty day period after Employee sustains an injury or illness causing long term disability, but before Employee receives benefits from any long term disability insurance policy. The decision whether to provide base pay and benefits during this thirty day period shall be made by the City Council, at its sole discretion. To qualify for this base pay and benefits, Employee must notify the Assistant Director of Administrative Services-Human Resources, in writing, immediately upon becoming aware that an injury or illness may result in a long term disability and Employee must apply for disability insurance benefits as required by the

disability insurance plan referenced in subsection (c) above. Additionally, upon request by Employer, Employee shall provide the City with a written statement from a physician, satisfactory to the Assistant Director of Administrative Services-Human Resources after consultation with the Risk Management Division, detailing Employee's injury or illness and recommending disability leave. The Human Resources Division, in consultation with the Risk Management Division, may contact Employee's physicians and medical treatment providers, as may be appropriate, to determine the severity and scope of injury/illness and probable length of absence of Employee. Employee must also make himself available for examination by a City-appointed physician (at City expense).

No base pay or benefits shall be provided to Employee pursuant to this subsection (d) except in accordance with the procedures set forth in this subsection (d). Nor shall any benefits be provided pursuant to this subsection (d) unless Employee qualifies for benefits under the long term disability insurance plan referenced in subsection (c) above.

Nothing in this subsection (d) shall entitle Employee to total compensation that exceeds the base pay and benefits provided to Employee in the absence of a disability. Any disability indemnity received by Employee from the State of California intended to cover the period for which Employee has received base pay and benefits pursuant to this subsection (d), shall be paid to the City.

(4) Deferred Compensation. Employee shall be eligible to participate in Employer's deferred compensation plan, to the extent and as provided by the applicable plan document and controlling law. In the event of Employee's participation, Employer shall contribute at least \$30 per month to the City's deferred compensation plan.

(a) Conversion of Sick Leave to Deferred Compensation. Employee may convert accumulated sick leave to base pay. The extra pay may only be used to fund "catch up" contributions to deferred compensation. The following restrictions apply to this sick leave conversion program:

- Employee must have a minimum of 7 years of service with the City of Beverly Hills; and
- Employee's sick leave accumulation cannot be reduced below 240 hours; and
- The conversion is limited to the time period allowed by the IRS for "catch-up" provisions in 457, 401(k) and other plans as adopted by the City and the conversion can be used only for funding these deferred compensation "catch-ups"; and
- A conversion of no more than \$9,500 per calendar year is allowed; and
- The conversion will be at the then-existing sick leave payoff percentage.

(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.

(6) Reimbursement and Savings Plans. Employee may participate in Employer's medical reimbursement, childcare reimbursement, retiree health savings and any similar plan based exclusively on employee contributions and according to the terms and conditions of the applicable plan documents.

(7) Benefit Terms. Employer reserves the right to enhance, reduce, terminate, amend or to otherwise change its benefit programs at any time, to the maximum extent permitted by law. Except as otherwise provided in this Agreement, all benefits shall be provided according to the terms of applicable plan document, schedule or City policy and subject to applicable laws and regulations. No term or requirement of this Employment Benefits section will be effective if it would violate any provision of law or related regulations (such as, without limitation, the Internal Revenue Code or Public Employment Retirement Law) and the inability of Employer to effectuate such requirements shall not constitute a breach of this Agreement.

(8) Expenses. Employer recognizes that Employee may incur certain expenses of a non-personal and job related nature. Employer agrees to reimburse or to pay such business expenses which are incurred and submitted according to Employer's normal expense approval and reimbursement procedures. To be eligible for reimbursement, all expenses must be supported by documentation meeting Employer's normal requirements and must be submitted within time limits established by Employer. The Employee's cost of membership in the Beverly Hills Rotary Club is reimbursable hereunder.

(9) Bonding. Employer shall bear the full costs of any fidelity or other bonds required of Employee (if any) under any law or ordinance by virtue of his employment as City Clerk.

5. EVALUATIONS. Employee shall report to and may be evaluated by the City Council.

6. INDEMNIFICATION. Except as otherwise permitted, provided, limited or required by law, including, without limitation, California Government Code Sections 825, 995, and 995.2 through 995.8, the Employer will defend and pay any costs and judgments assessed against Employee arising out of an act or omission by Employee occurring in the course and scope of Employee's performance of his duties under this Agreement.

8. AT-WILL RELATIONSHIP. Employee shall hold office and continue in employment at the pleasure of the City Council. Except as otherwise provided by law, the City Council may remove Employee from office and may terminate this Agreement and the employment relationship with or without cause and with or without prior notice. Nothing in this Agreement shall prevent, limit or otherwise interfere with the right of Employee to resign from his employment with City, subject only to Employee providing sixty (60) calendar days prior written notice to City.

9. TERM AND TERMINATION OF AGREEMENT.

A. Term. Subject to earlier termination, as provided in this Agreement, this Agreement shall remain in full force and effect for an approximate eleven (11) year and six (6) month term, from December 23, 2005 to June 30, 2016.

B. Compensation on Termination. Employer shall pay Employee for all services through the effective date of termination.

(1) Vacation. Employee shall be paid for all properly accrued and unused vacation time at the time of termination. The rate of pay off shall be based on the rate of pay at the time of termination. Employee will not have the option of utilizing accrued vacation in lieu of vacation pay off at the time of termination.

(2) Sick Leave. At termination, if Employee has achieved seven (7) or more continuous years of service, he shall be eligible for sick leave pay off upon termination of employment with the City. The rate of sick leave pay off shall be calculated as follows:

- For the first 7 years - 4% of accrued, unused sick leave per full year of service.
- For each year thereafter - 6% of accrued, unused sick leave per full year of service to a maximum of 100%.
- Sick leave pay off shall be calculated at the rate of base pay received by Employee at the time of termination.

(3) Administrative Leave. At termination, Employee shall receive a pro-rated amount of administrative leave unused during the calendar year of departure at the rate of 10 hours per month up to a maximum of 80 hours.

10. METHOD OF AMENDMENT. No amendments to this Agreement may be made except by a writing signed and dated by Employer and Employee.

11. NOTICES. Any notice to Employer under this Agreement shall be given in writing to Employer, either by personal service or by registered or certified mail, postage prepaid, addressed to the City Council care of the City Manager's Office at City's then

principal place of business. A courtesy copy shall be given to the City Attorney in a like manner. Any such notice to Employee shall be given in a like manner and, if mailed, shall be addressed to Employee at his home address then shown in Employer's files maintained by the Human Resources Office. For the purpose of determining compliance with any time limit in this Agreement, a notice shall be deemed to have been duly given (a) on the date of delivery, if served personally on the party to whom notice is to be given, or (b) on the third calendar day after mailing, if mailed to the party to whom the notice is to be given in the manner provided in this section.

12. GENERAL PROVISIONS.

A. If any provision of this Agreement is held invalid or unenforceable, the remainder of this Agreement shall nevertheless remain in full force and effect. If any provision is held invalid or unenforceable with respect to particular circumstances, it shall nevertheless remain in full force and effect in all other circumstances.

B. This Agreement sets forth the final, complete and exclusive agreement between Employer and Employee relating to the employment of Employee by Employer. Any prior discussions or representations by or between the parties are merged into and rendered null and void by this Agreement. The foregoing notwithstanding, Employee acknowledges that, except as expressly provided in this Agreement, his employment is subject to Employer's generally applicable rules, policies and regulations, including those pertaining to employment matters, such as rules and regulations addressing equal employment opportunity, sexual harassment and violence in the workplace.

C. This Agreement shall be interpreted and construed pursuant to and in accordance with the local laws of the State of California and all applicable Codes, Ordinances and Resolutions.

D. Employee acknowledges that he has had the opportunity and has conducted an independent review of the financial and legal effects of this Agreement. Employee acknowledges that he has made an independent judgment upon the financial and legal effects of this Agreement and has not relied upon any representation of Employer, its officers, agents or employees other than those expressly set forth in this Agreement.

[Signatures on the Following Page.]

IN WITNESS WHEREOF, each party has caused this Agreement to be signed and executed personally or on its behalf by its duly authorized representative.

EMPLOYEE


BYRON POPE

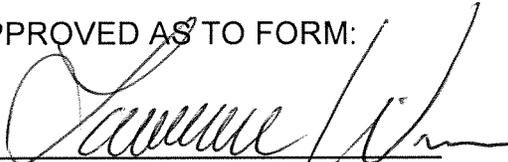
EMPLOYER

CITY OF BEVERLY HILLS, A California
Municipal Corporation

By: _____
JULIAN A. GOLD, M.D.
Mayor of the City of Beverly Hills,
California

ATTEST:

_____(Seal)
LOURDES SY-RODRIGUEZ
Assistant City Clerk

APPROVED AS TO FORM:

LAURENCE S. WIENER
City Attorney