

City of Piedmont
COUNCIL AGENDA REPORT

DATE: June 7, 2021

TO: Mayor and Council

FROM: Sara Lillevand, City Administrator

SUBJECT: Consideration of Approval of an Amendment to Paul Benoit's Existing Employment Agreement to Provide Special Assistance to the City Administrator

RECOMMENDATION

Approve an Amended Employment Agreement for Paul Benoit as a retired annuitant to provide additional special assistance to the City Administrator with City Operations.

BACKGROUND

On January 19, 2021, the City Council approved an employment agreement which appointed former City Administrator Paul Benoit to provide special assistance to the City Administrator with Measure UU Projects (the "Agreement"). Staff proposes amending the Agreement with Mr. Benoit to allow him to perform additional duties and special projects at the direction of the City Administrator.

The proposed additional duties would authorize Mr. Benoit to provide special assistance to the City Administrator for a limited time duration while the City Administrator utilizes accrued vacation time. Mr. Benoit possesses special skills necessary to assist the City Administrator with city operations, as he is familiar with Piedmont, and previously served as the City Administrator. During the time of this additional assignment, the City Administrator will utilize accrued vacation time but will oversee Mr. Benoit. The additional project assignment ensures that City operations will not be backlogged and will continue with limited interruption.

Amendments to Agreement and Compliance with Retired Annuitant Employment and Rules

1. Extra Help. For post-retirement employment while working for a CalPERS employer include limited duration work for "extra help." By assisting the City Administrator, and for a limited time duration, Mr. Benoit would be providing "extra help".
2. Compensation. The hourly pay rate cannot be less than the minimum or exceed the maximum paid to other employees performing comparable duties as listed in the employer's publicly available pay schedule, and no other benefit, incentive, compensation in lieu of benefits, or other form of compensation in addition to the hourly pay rate.

The proposed agreement, as amended, would increase Mr. Benoit's hourly pay from \$111.00 to \$116.00 reflecting the additional duties relating to the newly assigned projects and duties.

The proposed amendments to the Agreement ensures that Mr. Benoit continues to meet the requirements of California Public Employees Retirement System (CalPERS).

FISCAL CONSIDERATIONS

As a retired annuitant, Mr. Benoit is limited to working 960 hours per fiscal year for any PERS employer. The new duties assigned by this agreement would be subject to the same limit. Additional duties performed under this contract amendment not related to the Pool project will be paid out of the General Fund. The maximum additional annual cost of the agreement is \$4,800.

CITY ATTORNEY REVIEW

The attached agreement has been reviewed and approved as to form and legality by the City Attorney.

ATTACHMENTS

1. Amended Employment Agreement for Paul Benoit

AMENDED EMPLOYMENT AGREEMENT
For
RETIRED ANNUITANT TO PROVIDE SPECIAL ASSISTANCE WITH MEASURE UU
PROJECTS AND SPECIAL PROJECT ASSISTANCE TO THE CITY
ADMINISTRATOR

This Amended Employment Agreement (“Agreement”) is made and entered into this 7th day of June 2021, by and between the CITY of PIEDMONT a California municipal corporation, and PAUL BENOIT (“BENOIT”), an individual, on the following terms and conditions:

RECITALS

A. CITY desires to employ the temporary services of BENOIT as a retired annuitant to provide special assistance to the City Administrator, in carrying out duties and responsibilities related to Measure UU in consideration of and subject to the terms, conditions, and benefits set forth in this Agreement.

B. CITY passed Measure UU on the November 3, 2020 general election ballot which authorizes \$19.5 million to construct a new Community Pool and adjacent areas, including pools, showers, restrooms, locker rooms, and multi-use rooms, and all associated expenditures necessary to complete such work and issue the bonds. (“Measure UU Projects.”)

C. CITY has need for a temporary employee to provided special assistance to the City Administrator with Measure UU Projects, an assignment involving specialized skills and training, which is critically necessary to the successful implementation of the Measure UU Projects.

D. CITY desires to accept temporary employment of BENOIT as a retired annuitant to provide special assistance for the limited duration of the assistance to the City Administrator with the Measure UU Projects in consideration of and subject to the terms, conditions, and benefits set forth in this Agreement.

E. CITY also desires to employ the temporary services of BENOIT as a retired annuitant to provide special assistance to the City Administrator, in carrying out duties and responsibilities related to a special project assisting the City Administrator, in order to limit backlog, in consideration of and subject to the terms, conditions, and benefits set forth in this Agreement. (“City Administrator Assistance Project.”)

F. CITY has need for a temporary employee to provided special assistance to assist the City Administrator with special projects, an assignment involving specialized skills and training, which is critically necessary to City operations.

G. CITY desires to accept temporary employment of BENOIT as a retired annuitant to provide special assistance for the limited duration to assist with City Administrator duties in consideration of and subject to the terms, conditions, and benefits set forth in this Agreement.

H. BENOIT is a retired annuitant and person receiving a benefit from the California Public Employees' Retirement System ("CalPERS") within the meaning of Government Code §§ 7522.56 and 21224. BENOIT acknowledges that he is restricted to working no more than a combined 960 hours for CITY, a state agency, or other CalPERS contracting agencies (collectively "CalPERS Agencies") during CITY's 2020-2021 fiscal year, or for any additional or subsequent fiscal year, and that his compensation is statutorily limited as provided in Government Code §§ 7522.56(d) and 21224. BENOIT represents that he has not received any unemployment compensation from any CalPERS Agencies during the 12-month period preceding the effective date of this Amended Agreement. BENOIT further represents his CalPERS retirement date became effective prior to the 180-day period preceding the effective date of this Amended Agreement; that he has not received a retirement incentive upon retirement within the meaning of Government Code § 7522.56(g), and that he has attained normal retirement age within the meaning of Government Code § 21220.5; and

I. CITY has determined that it is necessary to hire BENOIT, a retired annuitant, because the Measure UU Projects and the City Administrator Assistance Project, require special skills and training, and BENOIT, by virtue of his significant prior experience in municipal government leadership roles including as City Administrator in Piedmont, has those special skills and training.

OPERATIVE PROVISIONS

In consideration of the promises and covenants contained herein, the parties agree as follows:

1. Position and Duties.

1.1 Position. BENOIT accepts employment with CITY as a retired annuitant to provide special assistance to the City Administrator with Measure UU and City Administrator Assistance Projects and shall perform functions, duties and services for the limited duration of these projects. Toward that end, BENOIT shall report directly to the City Administrator and will periodically, or as may be otherwise specifically requested by the City Administrator, provide status reports to the City Administrator and/or City Council on the projects.

1.2 Term. This Amended Agreement shall not be effective until approved by Council on June 7, 2021 and then executed by both parties (the City Administrator and Paul Benoit) on June __, 2021. BENOIT commenced the performance of his duties as Measure UU Special Assistant to the City Administrator on January 21, 2021 and pursuant to the terms of this Amended Agreement, he shall continue to perform duties related to the Measure UU Projects. BENOIT shall commence the performance of his duties relating to the City Administrator Assistance Project on June __, 2021. This Amended Agreement shall expire as of the first of the following to occur: (i) satisfactory completion of the Measure UU Projects and the City Administrator Assistance Project; (ii); upon BENOIT working his 960th hour for CITY including hours worked for other CalPERS Agencies during any fiscal year; or (iii) upon termination of the Agreement by either BENOIT or CITY as provided in Section 4 [Termination] of this Agreement.

1.3 At-Will. BENOIT acknowledges that he is an at-will, temporary retired annuitant employee of CITY who shall serve at the pleasure of the City at all times during the period of his service under this Agreement and that his employment may be terminated at any time and for any or no reason with or without cause as provide for in Section 4 [TERMINATION] of this Agreement or by operation of California or federal law. The terms of CITY's personnel rules, policies, regulations, procedures, ordinances, and resolutions, memoranda of understanding, regarding City Administrative Personnel (collectively "Personnel Policies"), as they may be amended or supplemented from time to time, shall apply to BENOIT, in the same manner as they apply to employees within CITY'S unclassified service. However, nothing in this Agreement is intended to, or does, confer upon BENOIT any right to any property interest in continued employment, or any due process right to a hearing before or after a decision by CITY to terminate his employment, except as is expressly provided in Section 1.2 [Term] or Section 4 [Termination] of this Agreement. Nothing contained in this Agreement shall in any way prevent, limit or otherwise interfere with the right of CITY to terminate the services of BENOIT, as provided in Section 1.2 [Term] or Section 4 [Termination]. Nothing in this Agreement shall prevent, limit or otherwise interfere with the right of BENOIT to resign at any time from this employment as a retired annuitant with CITY, subject only to the provisions set forth in Section 1.2 [Term] or Section 4 [Termination] of this Agreement. This at-will Employment Agreement shall be expressly subject to the rights and obligations of CITY and BENOIT, as set forth in Section 1.2 [Term] or Section 4 [Termination] below.

1.4 Hours of Work. BENOIT shall devote the time necessary to adequately perform his duties as a temporary retired annuitant providing special assistance to the City Administrator with the Measure UU and City Administrator Assistance Project. The parties anticipate that BENOIT will allocate his time between regular business hours and hours outside of regular business hours including, without limitation, attendance at regular and special City Council meetings, attendance at such community events and CITY functions as the City Administrator may direct. Toward that end, BENOIT shall be allowed flexibility in setting his own hours, provided the schedule of such hours provides reasonable availability to the City Administrator and does not exceed forty (40) hours worked in a workweek.

1.5 Other Activity. In accordance with Government Code Section 1126, during the period of his employment, BENOIT shall not accept, without the express prior written consent of City Council, any other employment or engage, directly or indirectly, in any other business, commercial, or professional activity, whether or not to pecuniary advantage, that is or may be competitive with CITY, that might cause a conflict-of-interest with CITY, or that otherwise might interfere with the business or operation of CITY.

1.6 Reasonable Reimbursement of Expenses. In accordance with City policy and practice, BENOIT may submit, and receive reimbursement for necessary and reasonable expense that he incurs in connection with his employment as a retired annuitant.

2. Compensation.

2.1 Rate of Pay. For all services performed by BENOIT pursuant to this Amended Agreement, CITY shall pay BENOIT compensation at the rate of ONE HUNDRED SIXTEEN

Dollars (\$116.00) per hour, to be paid according to the payroll schedule in place for CITY employees and subject to the limitations provided below.

2.2 Compliance with CalPERS Requirements. It is the intent of the parties to compensate BENOIT only to the extent permitted under Government Code §§ 21224 and 7522.56(d) and corresponding CalPERS regulations and policy statements. The parties acknowledge and agree that the rates of pay set forth above neither exceeds nor falls below the salary limitations established by CalPERS based on the rates set forth in the CITY's publically available salary schedule for the position(s) whose duties are most comparable to the work involved in the Measure UU Projects and City Administrator Assistance Project.

2.2.1 Recording and Reporting of Hours Worked. BENOIT will comply with all applicable CalPERS regulations governing employment after retirement including recording and reporting of all hours worked for CITY to CalPERS as may be required. CITY shall assist in any such reporting obligations to CalPERS. Additionally, BENOIT shall keep CITY continually apprised of any hours worked by BENOIT for other CalPERS Agencies during the term of this Agreement.

2.3 Benefits.

2.3.1 No Benefits. Pursuant to Government Code §21224 and related CalPERS regulations and policy statements, BENOIT shall not receive from CITY any benefits CITY commonly provides to its employees including, without limitation, health, dental, or vision insurance coverage, life insurance, employee assistance programs, and similar benefits.

3. Vacation and Leave.

3.1 No Paid Leave. BENOIT and CITY agree that BENOIT in accordance with Government Code §21224 and related CalPERS regulations and policy statements, shall not be provided or accrue any personal time off, vacation, sick leave, administrative leave, paid holidays or similar paid leave benefits.

4. Termination.

4.1 By CITY. This Agreement may be terminated by CITY for any reason fourteen (14) days after notice in writing to BENOIT of such termination. CITY's only obligation in the event of such termination will be payment to BENOIT of all compensation then due and owing as set forth in Section 2.1 [Rates of Pay] up to and including the effective date of termination. However, this Agreement may be terminated immediately if necessitated by changes to CalPERS statutory or regulatory requirements.

4.2 By BENOIT. This Agreement may be terminated by BENOIT for any reason fourteen (14) days after notice in writing to CITY of such termination. CITY shall have the option, in its complete discretion, to make BENOIT's termination effective at any time prior to the termination date given by BENOIT, provided CITY pays BENOIT all compensation as set forth in Section 2.1 [Rate of Pay] then due and owing him through the last day actually worked. It is

understood and agreed that any notice of termination should be given as soon as practicable and in the best interest of CITY.

4.3 No Notice for Expiration. Nothing in this Section 4 [Termination] shall be construed to require either party to give advance written notice in order for the Agreement to expire as set forth in Section 1.2 [Term].

4.4 Termination Obligations. BENOIT 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 CITY and shall be returned promptly to CITY upon termination of BENOIT's employment. BENOIT's obligations under this subsection shall survive the termination of his employment and the expiration of this Agreement.

4.5 No Benefits Upon Termination. BENOIT agrees that he shall be entitled to no benefits upon termination.

5. Proprietary Information.

“Proprietary Information” is all information and any idea pertaining in any manner to the business of CITY (or any CITY affiliate), its employees, clients, consultants, or business associates, which was produced by any employee of CITY in the course of his/her employment or otherwise produced or acquired by or on behalf of CITY. All Proprietary Information not generally known outside of CITY's organization, and all Proprietary Information so known only through improper means, shall be deemed “Confidential Information.” During his employment by CITY, BENOIT shall use Proprietary Information, and shall disclose Confidential Information, only for the benefit of CITY and as is or may be necessary to perform his job responsibilities under this Agreement. Following termination, CITY shall not use any Proprietary Information and shall not disclose any Confidential Information, except with the express written consent of CITY. BENOIT's obligations under this Section shall survive the termination of his employment and the expiration of this Agreement.

6. Conflict Of Interest.

BENOIT represents and warrants to CITY that he presently has no interest, and represents that he will not acquire any interest, direct or indirect, financial or otherwise, which would conflict in any manner or interfere in any way with performance of his services under this Agreement.

7. General Provisions.

7.1 Recitals. The recitals, inclusive of all facts and representations, are incorporated into this Agreement as if set forth in the Operative Provisions.

7.2 Vehicle Operation. BENOIT shall operate any vehicle used in connection with the performance of his duties under this Agreement in a safe manner and otherwise in observance of all established traffic safety laws and ordinances and shall maintain a valid automobile's driver's license during the period of employment.

7.3 Notices. All notices, requests, demands and other communications under this Agreement shall be in writing and shall be effective upon delivery by hand or email or three (3) business days after deposit in the United States mail, postage prepaid, certified or registered, and addressed to CITY at the address below, and/or at the last known address maintained in BENOIT's personnel file. BENOIT agrees to notify CITY in writing of any change in his address during his employment with CITY. Notice of change of address shall be effective only when accomplished in accordance with this Section.

CITY's Notice Address:

City of Piedmont
120 Vista Avenue
Piedmont, CA 94611
Attn: City Administrator

Retired Annuitant's Address:

Paul BENOIT
[Deliver to last updated address in personnel file]

7.4 Indemnification. Subject to, in accordance with, and to the extent provided by the California Tort Claims Act [Government Code Section 810 *et seq.*] CITY will indemnify, defend, and hold BENOIT harmless from and against any action, demand, suit, monetary judgment or other legal or administrative proceeding, and any liability, injury, loss or other damages, arising out of any act or omission occurring during BENOIT's tenure as Measure UU Special Assistant.

7.5 Integration. This Agreement is intended to be the final, complete, and exclusive statement of the terms of BENOIT's employment by CITY. This Amended Agreement supersedes all other prior and contemporaneous agreements and statements, whether written or oral, express or implied, pertaining in any manner to the employment of BENOIT, and it may not be contradicted by evidence of any prior or contemporaneous statements or agreements. To the extent that the practices, policies, or procedures of CITY, now or in the future, apply to BENOIT and are inconsistent with the terms of this Agreement, the provisions of this Agreement shall control.

7.6 Amendments. This Agreement may not be amended except in a written document signed by BENOIT, approved by the City Council and signed by the City Administrator.

7.7 Waiver. Failure to exercise any right under this Agreement shall not constitute a waiver of such right.

7.8 Assignment. BENOIT shall not assign any rights or obligations under this Agreement. CITY may, upon prior written notice to BENOIT, assign its rights and obligations hereunder.

7.9 Severability. If a court or arbitrator holds any provision of this Agreement to be invalid, unenforceable, or void, the remainder of this Agreement shall remain in full force and effect.

7.10 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of California, and any action in connection with or arising out of this Agreement or any dispute between the parties shall be commenced and maintained in the Superior Court of the State of California for the County of Alameda or the United States District Court for the Northern District of California.

7.11 Interpretation. This Agreement shall be construed as a whole, according to its fair meaning, and not in favor of or against any party. By way of example and not in limitation, this Agreement shall not be construed in favor of the party receiving a benefit nor against the party responsible for any particular language in this Agreement. Captions are used for reference purposes only and should be ignored in the interpretation of the Agreement. This Agreement may be altered, amended or modified only by an instrument in writing, executed by the parties to this Agreement and by no other means. Each party waives their future right to claim, contest or assert that this Agreement was modified, cancelled superseded or changed by any oral agreement, course of conduct, waiver or estoppel.

7.12 Acknowledgment. BENOIT acknowledges that he has had the opportunity to consult legal counsel in regard to this Agreement, that he has read and understands this Agreement, that he is fully aware of its legal effect, and that he has entered into it freely and voluntarily and based on his own judgment and not on any representations or promises other than those contained in this Agreement.

IN WITNESS WHEREOF, CITY has caused this Agreement to be signed and executed on its behalf by its City Administrator and BENOIT has signed and executed this Agreement, as of the date first indicated above.

RETIRED ANNUITANT

CITY OF PIEDMONT

Paul BENOIT

Sara Lillevand, City Administrator

APPROVED AS TO FORM:

Michelle Marchetta Kenyon,
City Attorney

ATTEST:

John O. Tulloch

City Clerk