City of Piedmont
COUNCIL AGENDA REPORT

DATE: September 16, 2024

TO: Mayor and Council

FROM: Rosanna Bayon Moore, City Administrator

SUBJECT: Consideration of Approval of an Exception to the 180-Day California Employees' Retirement System (CalPERS) Waiting Period for a Retired Annuitant Under Government Code section 7522.56 and 21224 and Authorization to Execute an Employment Agreement with Lisa Douglas to Fill a Critical Need in the Police Department Providing Special Assistance to the Chief of Police for the Dispatch Renovation Project

---

RECOMMENDATION

By a single motion, take the following actions:

1. Adopt Resolution No. _____ approving an exemption to the 180-day CalPERS waiting period for a retired annuitant, in accordance with Government Code Sections 7522.56 and 21224; and
2. Approve an employment agreement to appoint Lisa Douglas as a retired annuitant providing special assistance to the Chief of Police for the dispatch renovation project and authorize the City Administrator to execute the agreement.

BACKGROUND

On October 4, 2021, City Council prioritized the relocation and renovation of the Emergency Dispatch Center as the highest and best use for American Rescue Plan Act funding. Since that time, staff drafted and issued a Request for Proposals (RFP) to engage firms to provide Architecture and Engineering Design Services. On September 6, 2022, the Council awarded COAR Design Group (COAR) a contract for completion of construction documents for the upgrade of the dispatch center. COAR and staff drafted and issued an RFP to engage firms to provide construction services. On March 18, 2024, the Council awarded Giant Construction, LLC a construction contract to execute the construction documents and build the new dispatch center. Staff estimates the completion date of the project will be sometime during the first quarter of 2025. The contract documents allow for 175 working days or 35 weeks to complete the work.

Support Services Commander Lisa Douglas has been tasked with managing the project on the Police Department's behalf and coordinating with the construction manager, Piedmont Public Works staff, and the City's Information Technology team. Commander Douglas' expertise for the project is particularly critical in that she coordinates the City's efforts with State of California 911 operations via the Governor's Office of Emergency Services, the 911 provider through AT&T, public safety radio communications through the East Bay Regional Communications System

Authority, and the City's public safety computer aided dispatch and records management systems. Commander Douglas has identified key individuals in each of these critical areas and held regular meetings in preparation for their eventual mobilization and integration towards the latter stages of the project.

Commander Douglas is scheduled to retire on December 2, 2024, prior to the project completion date. Given the importance of this project, and the highly technical nature of the subject matter, the Chief of Police is recommending the addition of Lisa Douglas as a special assistant for the Dispatch Project after her retirement date.

Retired Annuitant Employment and Rules

As Commander Douglas will be a retired annuitant, her employment is restricted by State law and California Public Employees Retirement System (CalPERS) regulations. A retired annuitant is a CalPERS retiree who works as an at-will employee with certain restrictions to avoid jeopardizing one's retirement allowance. State and federal laws provide specific employment restrictions for retired annuitants who return to work for an employer in the same public retirement system from which they receive a benefit. Section 7522.56 and 21224 of the California Government Code states that a retiree may only work for CalPERS agencies a maximum of 960 hours per fiscal year. The law also states that if an agency wishes to reemploy such individual sooner than 180 days after retirement, the governing board must certify that the nature of the appointment is necessary to fill a critical need. Additionally, compensation paid to retirees cannot be less than the minimum nor exceed the maximum monthly base salary paid to other employees performing comparable duties. The minimum monthly salary for the Support Services Commander starts at $12,705.00 or $73.30 per hour and the maximum monthly salary is $15,444.00 or $89.10 per hour, as approved in the City's publicly available pay schedule. Furthermore, per CalPERS guidelines, the retiree must certify that she has not or will not receive a Golden Handshake or any other retirement-related incentive.

Resolution No. _____ and the proposed employment agreement for Lisa Douglas as a retired annuitant meets these requirements. This item appeared on the consent agenda on September 3, 2024, when adoption requires placement on the regular agenda. No changes other than placement have occurred.

FISCAL IMPACT

Commander Douglas will be paid $89.10 per hour and may work a total of 960 hours per fiscal year, for a maximum of $85,537.92 for Fiscal Year 2024/2025. Pursuant to CalPERS law, she may not receive any additional compensation or benefits. Construction management project funds from the Dispatch Center project will be utilized for services rendered under the agreement.

ATTACHMENTS

1. Resolution ___ Approving an Exception to the 180-Day California Employees' Retirement System (CalPERS) Waiting Period for a Retired Annuitant Under Government Code sections 7522.56 and 21224; and Retired Annuitant Employment Agreement (Exhibit A to Resolution)

By: Jeremy Bowers, Chief of Police

RESOLUTION NO._____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PIEDMONT, CALIFORNIA, APPROVING AN EXCEPTION TO THE 180-DAY WAITING PERIOD TO HIRE A CALPERS RETIRED ANNUITANT IN ACCORDANCE WITH GOVERNMENT CODE SECTIONS 7522.56 AND 21224 AND AUTHORIZING AN EMPLOYMENT AGREEMENT WITH LISA DOUGLAS TO PROVIDE TEMPORARY EXTRA HELP AS A RETIRED ANNUITANT FOR A LIMITED DURATION

WHEREAS, in compliance with Government Code section 7522.56 the City of Piedmont (the "City") must provide CalPERS this certification resolution when hiring a retiree before 180 days has passed since his or her retirement date; and

WHEREAS, Lisa Douglas, will retire from the City in the position of Support Services Commander, effective December 2, 2024; and

WHEREAS, section 7522.56 requires that post-retirement employment commence no earlier than 180 days after the retirement date, which is May 31, 2025, without this certification resolution; and

WHEREAS, section 7522.56 provides that this exception to the 180-day wait period shall not apply if the retiree accepts any retirement-related incentive; and

WHEREAS, the City Council, the City, and Lisa Douglas certify that Lisa Douglas has not and will not receive a Golden Handshake or any other retirement-related incentive; and

WHEREAS, the City Council hereby appoints Lisa Douglas as a retired annuitant extra help position for the critical need of providing special assistance to the Chief of Police with the construction of a public safety dispatch center for the City under Government Code section 21224, effective December 9, 2024; and

WHEREAS, the entire employment agreement between Lisa Douglas and the City has been reviewed by City Council and is attached to this Resolution as Exhibit A; and

WHEREAS, no matters, issues, terms or conditions related to this employment and appointment have been or will be placed on a consent calendar; and

WHEREAS, the employment shall be limited to 960 hours per fiscal year for all CalPERS employers; and

WHEREAS, the compensation paid to retirees cannot be less than the minimum nor exceed the maximum monthly base salary paid to other employees performing comparable duties, divided by 173.333 to equal the hourly rate; and

WHEREAS, Douglas will be performing comparable duties as the Support Services Commander; and

WHEREAS, the maximum base salary for this position is $15,444.00 per month and the hourly

equivalent is $89.10, and the minimum base salary for this position is $12,705.00 per month and the hourly equivalent is $73.30; and

WHEREAS, the hourly rate paid to Lisa Douglas will be $89.10; and

WHEREAS, Lisa Douglas has not and will not receive from the City any other benefit, incentive, compensation in lieu of benefit or other form of compensation in addition to this hourly pay rate.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Piedmont does hereby resolve, declare, determine and order as follows:

1. The above recitals are correct and are incorporated into this resolution as findings of the City Council.

2. The nature of the appointment of Lisa Douglas as described herein and detailed in the attached employment agreement (Exhibit A) as a retired annuitant extra help position for the critical need of providing special assistance to the Chief of Police to temporarily manage the City's construction of a public safety dispatch center for the City beginning December 9, 2024.

3. The City Administrator is authorized to enter into the retired annuitant employment agreement with Lisa Douglas (Exhibit A).

[END OF RESOLUTION]

AGREEMENT FOR TEMPORARY EMPLOYMENT OF RETIRED ANNUITANT FOR LIMITED DURATION WORK (Gov. Code § 21224)

This Employment Agreement ("Agreement") by and between the City of Piedmont ("City") a California municipal corporation and Charter city, and Lisa Douglas ("Douglas") an individual, (collectively, the "Parties") on the following terms and conditions:

RECITALS

A. Government Code section 21224 of the Public Employees' Retirement Law permits the City to employ a retiree of the California Public Employees' Retirement System ("CalPERS") with specialized skills needed to perform work of limited duration; and

B. City has an immediate need for an employee with specialized skills in public safety dispatch supervision and management to temporarily provide special assistance to the Chief of Police to manage the City's construction of a public safety dispatch center, particularly as it relates to the coordination and connectivity required for the transition of 911 operations to the new center, which will provide emergency services for life and death situations (the "Project"); and

C. Douglas, having formerly served as the City's Support Services Commander and who was overseeing the Project while she was employed with the City possesses the specialized skills, qualifications, experience, and abilities to provide such assistance; and

D. City desires to accept temporary employment of Douglas as a retired annuitant to provide assistance with the Project; and

E. Douglas is a retired annuitant and person receiving a benefit from CalPERS within the meaning of Government Code §§ 7522.56 and 21224. Douglas acknowledges that she is restricted to working no more than a combined 960 hours as a retired annuitant for City, a state agency, or other CalPERS contracting agencies (collectively "CalPERS Agencies") during City's 2024/2025 fiscal year, or for any additional or subsequent fiscal year, and that her compensation is statutorily limited as provided in Government Code §§ 7522.56(d) and 21224. Douglas represents that she has not received any unemployment compensation from any CalPERS Agencies during the 12-month period preceding the effective date of this Agreement; and

E. The City has determined that the appointment of Douglas by no later than December 9, 2024, the effective date of this Agreement, is necessary due to critical need, and will submit to CalPERS a resolution of such certification approved by the City Council; and

F. Douglas desires to provide temporary services to City under the terms of this Agreement and within the constraints of Government Code §§ 21224 and 7522.56 as a CalPERS retired annuitant, and City desires to temporarily hire Douglas on these terms to provide specialized services of a limited duration and critical need, subject to the terms and conditions set forth in this Agreement.

OPERATIVE PROVISIONS

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

1. Position and Duties.

1.1 Position. Douglas accepts temporary employment with City as a retired annuitant to temporarily provide special assistance to the Chief of Police to manage the City's construction of a public safety dispatch center, particularly as it relates to the coordination and connectivity required for the transition of 911 operations to the new center, which will provide emergency services for life and death situations. Douglas shall report directly to Chief of Police Jeremy Bowers.

1.2 Term. Douglas shall commence the performance of her duties on December 9, 2024. This Agreement shall expire as of the first of the following to occur: (i) June 30, 2025; (ii) upon Douglas working her 960th hour as a retired annuitant for City and other CalPERS agencies during City's 2024/2025 fiscal year or subsequent fiscal year; or (iii) upon termination of the Agreement by either Douglas or City as provided in Section 4 [Termination] of this Agreement.

1.3 At-Will. Douglas acknowledges that she 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 her service under this Agreement and that her employment may be terminated at any time and for any or no reason with or without cause as provided for in Section 4 [TERMINATION] of this Agreement or by operation of California or federal law. The terms of the City's personnel rules, policies, procedures, ordinances, resolutions, or Municipal Code (collectively "Personnel Policies") shall not apply to Douglas to the extent such Personnel Policies conflict with this Agreement. Nothing in this Agreement is intended to, or does, confer upon Douglas 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 her 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 Douglas 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 Douglas 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 Douglas, as set forth in Section 1.2 [Term] or Section 4 [Termination] below.

1.4 Hours of Work. Douglas shall devote the time necessary to adequately provide services. The parties anticipate that Douglas will work approximately twelve (12) hours per week during regular City business hours. Toward that end, Douglas shall be allowed flexibility in setting her own hours, provided the schedule of such hours provides reasonable availability to the City Administrator, the Chief of Police, and City staff 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 her employment, Douglas 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, Douglas may submit, and receive reimbursement for necessary and reasonable expenses that she incurs in connection with her employment as a retired annuitant.

2. Compensation.

2.1 Rate of Pay. For all services performed by Douglas under this Agreement, City shall pay Douglas compensation at the rate of Eighty-Nine Dollars and 10 Cents ($89.10) 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 Douglas only to the extent permitted under Government Code §§ 21224 and 7522.56(d) and corresponding CalPERS regulations and policy statements. The rate of pay is based on performance of duties comparable to those performed by the position of Support Services Commander and is not less than the minimum nor exceeds the maximum monthly base salary of a Support Services Commander (divided by 173.33 to equal an hourly rate) as listed on the City's publicly available pay schedule.

2.2.1 **Recording and Reporting of Hours Worked.** Douglas 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, Douglas shall keep City continually apprised of any hours worked by Douglas 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, Douglas 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. Douglas and City agree that Douglas 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, and at any time, with or without cause, upon written notice to Douglas of such termination. City's only obligation in the event of such termination will be payment to Douglas of all compensation then due and owing as set forth in Section 2.1 [Rate of Pay] up to and including the effective date of termination.

4.2 By Douglas. This Agreement may be terminated by Douglas 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 Douglas's termination effective at any time prior to the termination date given by Douglas, provided City pays Douglas all compensation as set forth in Section 2.1 [Rate of Pay] then due and owing her 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. Douglas 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 her incident to her employment belongs to City and shall be returned promptly to City upon termination of Douglas's employment. Douglas's obligations under this subsection shall survive the termination of her employment and the expiration of this Agreement.

4.5 No Benefits Upon Termination. Douglas agrees that she 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 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 her employment by City, Douglas shall use Proprietary Information, and shall disclose Confidential Information, only for the benefit of City and as is or may be necessary to perform her 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. Douglas 's obligations under this Section shall survive the termination of her employment and the expiration of this Agreement.

6. Conflict Of Interest.

Douglas represents and warrants to City that she presently has no interest, and represents that she 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 her 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. Douglas shall operate any vehicle used in connection with the performance of her 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 Douglas's personnel file. Douglas agrees to notify City in writing of any change in her address during her 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
(510) 420-3040

Retired Annuitant's Address:
[Deliver to last updated address in personnel file]

7.4 Indemnification. In accordance with and to the extent provided by the California Tort Claims Act [Government Code Section 810 *et seq*.] and Government Code §§ 995-996.6, City will defend and indemnify Douglas against and for losses sustained by Douglas arising out of any acts or omission occurring within the scope of her employment under this Agreement.

7.5 Integration. This Agreement is intended to be the final, complete, and exclusive statement of the terms of Douglas's employment by City. This 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 Douglas, 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 Douglas 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 Douglas and the City Manager.

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

7.8 Assignment. Douglas shall not assign any rights or obligations under this Agreement. City may, upon prior written notice to Douglas 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 San Mateo 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. Douglas acknowledges that she has had the opportunity to consult legal counsel in regard to this Agreement, that he/she has read and understands this Agreement, that she is fully aware of its legal effect, and that she has entered into it freely and voluntarily and based on her 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 Manager and Douglas has signed and executed this Agreement, as of the date first indicated above.

RETIRED ANNUITANT

_____
Lisa Douglas

CITY OF PIEDMONT

_____
Rosanna Bayon Moore, City Manager

APPROVED AS TO FORM:

_____
Michelle Marchetta Kenyon, City Attorney

ATTEST:

_____
Anna M. Brown
City Clerk