



## CITY COUNCIL AGENDA REPORT

**Meeting Date:** November 2, 2023

**From:** Abby Partin, Human Resources Director

**Subject:** Resolution Certifying the Appointment of Clayton Holstine as Interim City Manager in Compliance with the California Public Employees Retirement Law and Authorizing the Mayor to Sign an Employment Agreement with Mr. Holstine

### **Community Goal/Result**

Safe Community, Community Building, Fiscally Prudent

### **Purpose**

To ensure the community continues to receive excellent service by retaining and attracting exceptional employees in a financially prudent manner.

### **Recommendation**

Adopt the attached resolution certifying that the appointment of Clayton Holstine as Interim City Manager, effective January 2, 2024, is in compliance with the California Public Employees Retirement Law and authorize the Mayor to sign an Employment Agreement with Mr. Holstine concerning the interim appointment.

### **Background**

After twenty-five (25) years of service to the City of Brisbane as the City's City Manager, Clayton Holstine will retire on December 27, 2023. The City Council is actively recruiting for his replacement, but it is not likely that the Council will complete that recruitment and make an appointment for a new City Manager until some time after Mr. Holstine's retirement. The City Council has requested Mr. Holstine to continue to serve as City Manager on an interim basis until the City Council makes a permanent appointment; Mr. Holstine has agreed.

A person who retires from a local agency, such as the City of Brisbane, may under certain conditions be rehired by that local agency without jeopardizing that person's entitlement to receive retirement benefits from the California Public Employees Retirement System ("CalPERS"). Such a person is called a "retired annuitant". Generally, under the California Public Employees Retirement Law, a retired annuitant is not eligible to be hired by a local agency that contracts with CalPERS until 180 days have passed since the person's retirement. The Retirement Law, however, provides an exception when certain conditions are met and when the local agency that wants to hire a retired annuitant.

To fall within the exception, the local agency must adopt a resolution certifying to CalPERS that certain conditions will be met. Those conditions include: the person has not accepted any

retirement related incentives, such as a “Golden Handshake”; the local agency is actively searching for a permanent appointment to the position; the appointment may only be made once; the governing board of the local agency has reviewed and approved the appointment agreement; the interim appointment and certification resolution must be done as a regular agenda item; the number of hours the retired annuitant may work in any fiscal year is limited to 960; and the hourly rate to be paid the retired annuitant will not exceed the hourly rate paid to other employees performing comparable work; that the retired annuitant will not receive any other benefits, incentives or compensation other than the hourly rate; and the appointment is necessary to fill a critically needed position.

For the following reasons, all the above boxes have been or will be checked.

### **Discussion**

The City has not offered Mr. Holstine any retirement-related incentives, such as a Golden Handshake. The City Council is actively recruiting Mr. Holstine’s replacement, but that appointment will likely not occur until after Mr. Holstine’s retirement. The item is on the Council’s regular agenda. The appointment agreement has been presented to the City Council and the Council has been asked to approve it. The agreement provides, consistent with the Retirement Law, that Mr. Holstine may not work more than 960 hours in any fiscal year for any local agency that contracts with CalPERS for retirement benefits and the hourly rate to be paid to Mr. Holstine (\$142) is the same hourly rate that the City will be paying him at the time of his retirement on December 27, 2023. Given the numerous issues facing the City, such as negotiations concerning the Baylands, High Speed Rail litigation, and development of the Quarry property, all of which Mr. Holstine has had extensive involvement, and in light that the City does not have an Assistant or Deputy City Manager who could serve on an interim basis, Mr. Holstine’s appointment to Interim City Manager is necessary in order to fill a critically needed position.

Accordingly, staff recommends City Council adopt the attached resolution certifying that Mr. Holstine’s appointment as Interim City Manager is in compliance with the California Public Employees Retirement Law and Council authorize the Mayor to sign the attached Employment Agreement with Mr. Holstine.

### **Fiscal Impact**

The fiscal impact of this position will be included in the current budget.

### **Measure of Success**

The City is able to maintain a stable and high quality workforce.

**Attachments**

1. Resolution 2023-XX
2. Retired Annuitant Contract



---

Abby Partin, Human Resources Director



---

Tom McMorrow, City Attorney

## RESOLUTION NO 2023-XX

### A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BRISBANE CERTIFYING THE APPOINTMENT OF CLAYTON HOLSTINE AS INTERIM CITY MANAGER IN COMPLIANCE WITH THE CALIFORNIA PUBLIC EMPLOYEES' RETIREMENT LAW AND AUTHORIZING THE MAYOR TO SIGN AN EMPLOYMENT AGREEMENT WITH MR. HOLSTINE

**WHEREAS**, in compliance with Government (Gov.) Code section 7522.56 of the Public Employees' Law, the City of Brisbane must provide CalPERS a certification resolution when hiring a retiree before 180 days has passed since the retiree's retirement date; and

**WHEREAS**, Clayton Holstine will retire from the City of Brisbane in the position of City Manager, effective December 27, 2023; and

**WHEREAS**, Gov. Code section 7522.56 requires that post-retirement employment commence no earlier than 180 days after the retirement date, which is June 27, 2024 without this certification resolution; and

**WHEREAS**, Gov. Code 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 of Brisbane, as employer and Clayton Holstine certify that Mr. Holstine has not and will not receive a Golden Handshake or any other retirement-related incentive; and

**WHEREAS**, an appointment under Gov. Code section 21221(h) requires the retiree is appointed into the interim appointment during recruitment for a permanent appointment; and

**WHEREAS**, the City Council of the City of Brisbane authorized the search for a permanent appointment on (date); and

**WHEREAS**, the City Council of the City of Brisbane hereby appoints Clayton Holstine as an interim appointment retired annuitant to the vacant position of City Manager for the City of Brisbane under Gov. Code section 21221(h), effective January 2, 2024; and

**WHEREAS**, this Gov. Code section 21221(h) appointment shall only be made once and therefore will end on no later than June 30, 2024; and

**WHEREAS**, the entire employment agreement, contract or appointment document between Clayton Holstine and the City of Brisbane has been reviewed by this body and is attached herein; 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**, the maximum and minimum base salary for this position is \$142.14 and the hourly equivalent is \$142; and

**WHEREAS**, the hourly rate paid to Clayton Holstine will be \$142; and

**WHEREAS**, Clayton Holstine has not and will not receive any other benefit incentive, compensation in lieu of benefit or other form of compensation in addition to this hourly pay rate; and

**NOW, THEREFORE**, the City Council of the City of Brisbane resolves as follows:

The City Council of the City of Brisbane hereby certifies the nature of the employment of Clayton as described herein and detailed in the attached employment agreement and that this appointment is necessary to fill the critically needed position of City Manager for the City of Brisbane by January 2, 2024 because Mr. Holstine has served as City Manager for the City of Brisbane for nearly 25 years, is familiar with the numerous issues facing the City, the City does not have an Assistant or Deputy City Manager who could assume this position, and the City is actively recruiting for a permanent City Manager.

---

Madison Davis, Mayor

I hereby certify that the foregoing Resolution No. 2023-XX was duly and regularly adopted at a regular meeting of the Brisbane City Council on November 2, 2023, by the following vote:

Ayes:

Noes:

Absent:

Abstain:

---

Ingrid Padilla, City Clerk

Approved as to form:

---

Thomas R. McMorrow, City Attorney

**AGREEMENT FOR TEMPORARY EMPLOYMENT  
OF A RETIRED ANNUITANT**

THIS AGREEMENT, effective January 2, 2024, is between the CITY OF BRISBANE, a municipal corporation of the State of California, “City”, and CLAYTON HOLSTINE, “Retired Annuitant.”

**RECITALS**

WHEREAS, City requires extra help to perform work of a specialized skill for a limited duration; and

WHEREAS, Retired Annuitant served as City Manager of City for over 25 years and will utilize his expertise as a former City Manager which is critically important for the City until the Brisbane City Council appoints a new City Manager; and

WHEREAS, Retired Annuitant has significant experience as a long time City Manager making him well qualified to serve as an interim City Manager; and

WHEREAS, The Retired Annuitant is knowledgeable and skilled on matters related to the duties and functions of a City Manager and City wishes to have Retired Annuitant perform these necessary on-going duties and functions for a limited duration; and

WHEREAS, Section 21224 of the California Government Code authorizes the Retired Annuitant as a person with specialized skills needed in performing work of limited duration, provided, that (1) the appointment does not exceed a combined total of 960 hours per fiscal year, (2) the compensation does not exceed the maximum monthly base salary paid to other employees performing comparable duties based on an hourly rate, and (3) the retired annuitant does not receive any benefit, incentive, compensation in lieu of benefits, or other form of compensation in addition to the hourly pay rate; and

NOW THEREFORE, in consideration of the mutual terms, covenants, and conditions contained herein, the parties hereto agree as follows:

1. Effective Date and Term of Agreement: This Agreement shall be effective January 2, 2024 (“Effective Date”), and shall terminate automatically at midnight on June 30, 2024 provided, however, the parties may extend the term of this Agreement provided that such extension is permitted by law.
2. Compensation and Work Schedule:
  - a. Appointment and Scope of Services: Pursuant to this Agreement, Retired Annuitant shall temporarily perform the duties of City Manager as well as any key special assignments as may be necessary as determined by the Brisbane City Council. Such employment is “at will” and is subject to the terms of this Agreement. The Retired Annuitant shall perform said duties at the pleasure of and under the direct supervision of the Brisbane City Council.

- b. Rate of Pay: Retired Annuitant shall be paid at the rate of \$142 per hour, which represents hourly rate of City's current salary schedule for City Manager. Payments will be made on regularly scheduled City payroll dates, and shall be subject to all applicable payroll taxes and withholdings. Such compensation shall be the sole compensation for services under this Agreement.
  - c. Work Schedule and 960-Hour Limitation:

Retired Annuitant is expected to devote the necessary time, within and outside normal business hours, to the business of the City. However, pursuant to Government Code section 21224, Retired Annuitant may work a maximum 960 hours per fiscal year for all public employers that contract with CalPERS for retirement benefits. The City Council retains the right to designate, reduce, change, or amend the number of hours assigned to Retired Annuitant consistent with workload and other needs. Retired Annuitant will be responsible for keeping track of hours worked. Retired Annuitant must submit a record of hours worked to the Finance Department according to the same schedule and procedures as other City Retired Annuitants. The City will provide Retired Annuitant with copies of the hours reports periodically submitted to CalPERS regarding hours worked under this Agreement.
  - d. Status: Retired Annuitant shall serve at the pleasure of the City Council, subject to the terms and conditions hereof, and shall not acquire a property interest in employment or a right to continuing employment with the City. The terms, covenants, and conditions of Retired Annuitant's temporary employment with the City are expressly limited by and to the terms, covenants and conditions of this Agreement.
  - e. Benefits: Retired Annuitant shall not be entitled to any benefits other than the hourly wage listed above.
  - f. Duties: Retired Annuitant shall perform the duties of City Manager as directed by the Brisbane City Council.
  - g. Termination: Either party may terminate this Agreement without cause upon giving the other party not less than two weeks prior written notice. Notwithstanding anything to the contrary, Retired Annuitant shall, upon City's Notice of Termination, deliver to City a written status report of all projects or matters in which Retired Annuitant is involved. In the event of termination, all rights and obligations of the parties hereto shall thereupon cease. The provisions of this paragraph shall not be deemed a limitation upon the respective rights or remedies of the parties hereto which may accrue to them.
3. Employment Status:
- a. Benefits: Other than the compensation described above in Section 2, Retired Annuitant will receive no other benefits, incentives, compensation in lieu of benefits, or any other form of compensation. Retired Annuitant understands and agrees that the Retired Annuitant is not, and will not be, eligible to receive any benefits from the City of Brisbane.



- b. No Property Right in Employment: Retired Annuitant understands and agrees that the terms of employment are governed only by this Agreement and that no right of regular employment for any specific term is created by this Agreement. Retired Annuitant further understands that the Retired Annuitant acquires no property interest in employment by virtue of this Agreement, that the employment is “at will” as defined by the laws of the State of California (meaning that employment may be terminated at any time for any reason or for no reason), and that the Retired Annuitant is not entitled to any pre- or post-deprivation administrative hearing or other due process upon termination or any disciplinary action.
  - c. Status: Retired Annuitant shall serve at the pleasure of the City Council, subject to the terms and conditions hereof, and shall not acquire a property interest in employment or a right to continuing employment with the City of Brisbane. The terms, covenants, and conditions of Retired Annuitant’s employment with the City are expressly limited by and to the terms, covenants and conditions of this Agreement.
  - d. Employment of a Retiree: Retired Annuitant understands that CalPERS retired annuitants may be employed by a CalPERS public agency employer, by temporary appointment not to exceed 960 hours in any fiscal year for all such employers\*; either (1) during an emergency to prevent stoppage of public business, or (2) because the retired employee has skills needed in performing the work of limited duration.
- 4. Standard of Performance: All services to be performed by Retired Annuitant pursuant to this Agreement shall be performed in accordance with all applicable ordinances, policies, and rules and regulations of the City.
  - 5. Non-Assignment of Agreement: This Agreement is intended to secure the individual services of the Retired Annuitant and is not assignable or transferable by Retired Annuitant to any third party.
  - 6. Governing Law/Venue: This Agreement shall be interpreted according to the laws of the State of California. Venue for any action or proceeding regarding this Agreement shall be in San Mateo County.
  - 7. Entire Agreement and Modification: This Agreement constitutes the entire understanding of the parties hereto. This Agreement supersedes any previous contracts, agreements, negotiations or understandings, whether written or oral, between the parties. Retired Annuitant shall be entitled to no other compensation or benefits than those specified herein, and Retired Annuitant acknowledges that no representation, inducements or promises not contained in this Agreement have been made to Retired Annuitant to induce Retired Annuitant to enter into this Agreement.
  - 8. Enforceability: If any term, covenant, condition, or provision of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of

the provisions hereof shall remain in full force and effect and shall in no way be affected, impaired or invalidated thereby.

9. Conflict of Interest: Retired Annuitant agrees that during the term of this Agreement, Retired Annuitant will not maintain any financial interest or engage in any other contract employment, occupation, work, endeavor or association, whether compensated for or not, that would in any way conflict with, or impair, Retired Annuitant's ability to perform the duties described in this Agreement.

10 Effect of Agreement on Retired Annuitant's CalPERS Retirement Benefits; Indemnification:

The City makes no representation on the impact, if any, this Agreement shall or may have upon Retired Annuitant's CalPERS retirement benefits, status, duties, and/or obligations. Retired Annuitant acknowledges that in entering into this Agreement, Retired Annuitant has not relied upon any such representations in assessing the CalPERS-related impact of this temporary employment. Retired Annuitant releases the City from any and all CalPERS-related claims or liabilities that may arise in connection with Retired Annuitant's employment pursuant to this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement the day and year first hereinabove written.

**CITY OF BRISBANE:**

By: \_\_\_\_\_  
Madison Davis, Mayor

**RETIRED ANNUITANT:**

\_\_\_\_\_  
Clayton Holstine

Approved as to form:

Michael H. Roush  
Legal Counsel