

RESOLUTION NO. 2024-31

**A RESOLUTION OF THE BOARD OF DIRECTORS OF THE
SAN BENITO COUNTY WATER DISTRICT
APPOINTING BRETT MILLER AS INTERIM MANAGER OF
ADMINISTRATION, FINANCE, AND BUSINESS SERVICES**

GOVERNMENT CODE 21221(h)

WHEREAS, Government (Gov.) Code section 21221(h) of the Public Employees' Retirement Law permits the governing body to appoint a CalPERS retiree to a vacant position requiring specialized skills during recruitment for a permanent appointment, and provides that such appointment will not subject the retired person to reinstatement from retirement or loss of benefits so long as it is a single appointment that does not exceed 960 hours in a fiscal year; and

WHEREAS, the San Benito County Water District desires to appoint Brett Miller as an interim appointment retired annuitant to the vacant position of Manager of Administration, Finance, and Business Services for the San Benito County Water District under Gov. Code section 21221(h), effective July 18, 2024; and

WHEREAS, the San Benito County Water District and Brett Miller certify that Brett Miller 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, there has been a vacancy in the position of Manager of Administration, Finance, and Business Services since July 6, 2024 and San Benito County Water District is actively searching and recruiting for a permanent appointment for that position; and

WHEREAS, this Gov. Code section 21221(h) appointment shall only be made once and therefore will end on July 17, 2025 or earlier date in accordance with the terms of the employment agreement; and

WHEREAS, the entire employment agreement between Brett Miller and the San Benito County Water District has been reviewed by this body and is attached herein; 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 base salary for this position is \$14,583.33 and the hourly equivalent is \$84.13; the minimum base salary for this position is

\$12,916.66 and the hourly equivalent is \$74.51; and

WHEREAS, the hourly rate paid to Brett Miller will be \$84.13; and

WHEREAS, Brett Miller 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

THEREFORE, BE IT RESOLVED THAT the San Benito County Water District hereby certifies the nature of the employment of Brett Miller as described herein and detailed in the attached employment agreement and that this appointment is necessary to fill the critically needed position of Manager of Administration, Finance, and Business Services for the San Benito County Water District by July 18, 2024 because there is a vacancy in the position for the Manager of Administration, Finance, and Business Services, and filling this position is necessary to ensure the continued operation of the San Benito County Water District until the Manager of Administration, Finance, and Business Services position is filled.

BE IT FURTHER RESOLVED that the President of the Board is authorized to sign said Resolution, on behalf of this Board and the District.

BE IT FURTHER RESOLVED that the President of the Board is authorized to sign said employment agreement, on behalf of this Board and the District.

The foregoing Resolution was passed and adopted at a special meeting meeting of the Board of Directors of the San Benito County Water District held on July 17, 2024, by the following vote:

AYES: DIRECTORS: Shelton, Williams, Flores, Tonascia & Wright

NOES: DIRECTORS: None

ABSENT: DIRECTORS: None

ABSTAIN: DIRECTORS: None

(Signature of presiding Board member
Attested by Board Secretary
Resolution #2024-31)

/s/Andrew Shelton
Andrew Shelton
President

ATTEST:

/s/Barbara L. Mauro
Barbara L. Mauro
Board Secretary

RETIRED ANNUITANT EMPLOYMENT AGREEMENT

(Pursuant to California Government Code §§ 21221(h) and 7522.56)

This Employment Agreement (“AGREEMENT”) is entered into between the San Benito County Water District (“District”) and Brett Miller (“Miller”). The District and Miller may be referred to collectively as the “Parties.”

RECITALS

WHEREAS, the District desires to retain an Interim Manager of Administration, Finance, and Business Services to serve on a limited term basis as it conducts a recruitment for a permanent Manager of Administration, Finance, and Business Services; and

WHEREAS, pursuant to Government Code sections 7522.56(c) and 21221(h), the District finds that specialized knowledge, skills, and training are necessary to render the services contemplated under this AGREEMENT; and

WHEREAS, the District has determined that Miller, a California Public Employees’ Retirement System (“CalPERS”) retiree, is qualified by training and experience to render such services; and

WHEREAS, Miller desires to provide such services; and

WHEREAS, the Parties believe that the public interest will be served by this AGREEMENT.

NOW, THEREFORE, based on the mutual covenants, conditions and terms recited herein and made a material part hereof, the Parties agree as follows:

1. TERM AND MAXIMUM HOURS. Subject to early termination as provided for in this AGREEMENT, the term of this AGREEMENT shall commence July 18, 2024, and shall continue until July 17, 2025, or upon appointment of a permanent employee to the vacant Manager of Administration, Finance, and Business Services position, whichever occurs sooner. During the period of appointment, Miller shall devote such time, interest, and effort to the performance of his duties under this AGREEMENT as may be fairly and reasonably necessary.

As a CalPERS retired annuitant, the Parties agree that Miller may not work more than 960 hours for all CalPERS employers combined in a fiscal year (July 1 to June 30) and that while both Parties are responsible for monitoring compliance with this work hours limit, Miller shall be primarily responsible for monitoring his work hours. The Parties will agree upon the specific days and hours of work. The Parties understand and agree that this appointment is made only during the time the District is recruiting to fill the Manager of Administration, Finance, and Business Services position on a permanent basis and that this Agreement is not intended to be renewed or extended.

2. DUTIES. Miller is being appointed to perform the duties of the Manager of Administration, Finance, and Business Services. Miller shall perform all functions, duties, and services set forth in the attached Manager of Administration, Finance, and Business Services classification description (“Exhibit A.”)

3. HOURLY PAY RATE. Miller shall be compensated at a rate not to exceed the maximum, nor less than the minimum, monthly base salary paid to other employees performing comparable duties. Therefore, during the term of this AGREEMENT, the District agrees to pay Miller for the work he performs at \$84.13 per hour. This hourly rate is consistent with the rate required under Government Code sections 21221(h) and 7522.56. Miller shall be paid bi-weekly at the same time as other District employees.

4. BENEFITS. Miller is not eligible to receive any benefit, incentive, compensation in lieu of benefits, or other form of compensation other than the hourly pay rate. Miller understands that Government Code section 21221(h) provides that a retired person appointed to a vacant position pursuant to that subdivision may not receive any benefits, incentives, compensation in lieu of benefits, or any other forms of compensation in addition to the hourly pay rate described in Paragraph 3 above.

5. TERMINATION. Under the terms of this appointment, Miller serves as an “at-will” temporary employee and may be terminated at any time, with or without cause, pursuant to the provisions of this AGREEMENT. This AGREEMENT contains no express or implied promise to Miller concerning any form of continued employment as Interim Manager of Administration, Finance, and Business Services or in any other capacity. Miller agrees that the District has made no representation, promise, or statement that may be construed to mean that Miller has been employed on any basis other than an at-will basis in accordance with this AGREEMENT. Miller’s temporary, at-will employment status may only be changed or superseded by a subsequent written agreement signed by authorized representatives of both Parties. This AGREEMENT is the sole and exclusive basis for an employment relationship between Miller and the District. The Parties agree that Miller holds no property right in his employment by the District. With these understandings in mind, the Parties agree as follows:

The District may terminate this AGREEMENT without cause, or Miller may voluntarily resign his position, by endeavoring to provide the other Party written notice of termination or resignation of at least 14 calendar days prior to the effective date of such termination or resignation.

The AGREEMENT shall automatically terminate upon the occurrence of any of the following events: (i) mutual agreement of the Parties; (ii) the death or incapacity of Miller; (iii) the District hires a permanent Manager of Administration, Finance, and Business Services; (iv) Miller’s work exceeds a combined total of 960 hours in a fiscal year (July 1-June 30) for all CalPERS employers; or (v) the District stops actively recruiting for a permanent replacement.

6. CONFLICT OF INTEREST. Miller represents that there is no conflict of interest concerning duties to be rendered under this AGREEMENT with respect to Miller’s duties

and/or employment with any other parties or pursuant to any applicable ethical laws. If Miller believes that there is a conflict, or such conflict arises during the term of this AGREEMENT, Miller will immediately advise the District, and District may, by and through its Board of Directors and at its sole discretion, immediately terminate this AGREEMENT.

No official, employee, or consultant of District shall have any financial interest in this AGREEMENT in violation of California Government Code sections 1090 and following. This AGREEMENT and Miller shall be subject to the District's Conflict of Interest Code adopted pursuant to the provisions of California Government Code section 87300 and following.

7. COMPLIANCE WITH LAWS. Miller shall use reasonable care and diligence to comply with applicable federal, state, and local laws in the performance of the services under this AGREEMENT.

8. NON-DISCRIMINATION. During the performance of this AGREEMENT, Miller will not discriminate against any employee or applicant for employment based on any protected class or protected activity as prohibited under applicable District policy and law.

9. ACKNOWLEDGEMENT OF POST-RETIREMENT EMPLOYMENT OBLIGATIONS AND LIMITATIONS. By accepting this employment and signing below, Miller attests that: (1) he retired from a CalPERS agency more than 180 days prior to the effective date of his employment with the District; and (2) he has not received unemployment insurance benefits in the last 12 months arising out of any other post- retirement employment with a CalPERS agency.

By accepting temporary employment as the District's Interim Manager of Administration, Finance, and Business Services, Miller acknowledges that the law strictly limits the employment of a CalPERS retired annuitant by a CalPERS employer. Such employment is governed by Government Code sections 7522.56, 21221 and 21224, among other laws and regulations. Miller understands that a violation of these laws may result in Miller's retroactive reinstatement to active membership from the first date of unlawful employment, a repayment to CalPERS of retirement allowances received during the unlawful employment, retroactive member contributions, and administrative fees. Before entering into this Agreement with the City, Miller was given the opportunity to consult with his own legal counsel and/or CalPERS to ensure his employment as the District's Interim Manager of Administration, Finance, and Business Services will be in compliance with the law.

The District does not make any guarantees, warranties or promises, express or implied, on the impact, if any, this AGREEMENT may have on Miller's CalPERS retirement benefits, status, duties, or obligations. Miller acknowledges that in entering into this AGREEMENT, he has not relied upon any representations by the District regarding the impact of this AGREEMENT on his retirement benefits.

In order to understand the circumstances, restrictions and consequences of non-compliance with the laws governing retired annuitant positions, Miller was advised that he may want to review the CalPERS publication entitled “A Guide to CalPERS Employment After Retirement” available on the CalPERS website: <http://www.calpers.ca.gov>. Miller was also made aware that he may also want to review the Public Employees’ Retirement Law (Government Code section 20000, *et seq.*), the Public Employees’ Pension Reform Act of 2013 (Government Code section 7522, *et seq.*) and other applicable law. If Miller requires further clarification, he may contact his attorneys, CalPERS and other applicable sources.

10. HOLD HARMLESS AGREEMENT. By signing below, Miller waives, releases and holds harmless the District, its Board of Directors, employees, officers, elected officials, agents, attorneys or representatives (“Releasees”) against any claim, complaint, cause of action, lawsuit, grievance, or damages arising out of any adverse consequences, fines, restitution, or damages assessed against Miller by CalPERS, a court of competent jurisdiction, or other regulatory or administrative agency because of the effect his post-retirement employment with the District could have on his status as a CalPERS retired annuitant. Miller acknowledges that the District has not induced him to believe that his employment is legally compliant with applicable law.

Each Party to this AGREEMENT expressly acknowledges that no representations, inducements, promises or agreements, orally or otherwise, have been made by any Party, or any person acting on behalf of any Party, which are not embodied herein, and that no other agreement, statement, representation or promise not contained in this AGREEMENT shall be of any force or effect.

11. ENTIRE AGREEMENT. This AGREEMENT contains the entire agreement between the Parties. Any agreements, correspondence, letters, documents, or discussions prior to this AGREEMENT that deal with the terms contained herein, are superseded by this AGREEMENT.

12. BINDING EFFECT. This AGREEMENT is binding upon the District and Miller and their successors. Except as otherwise provided herein, neither the District nor Miller shall assign, sublet, or transfer their interest in this AGREEMENT, or any part thereof, without the prior written consent of the other, and any purported assignment without such written consent will be void.

13. SEVERABILITY. If any part of this AGREEMENT is in conflict or inconsistent with the applicable provisions of federal law, state law or District rules, or is otherwise held to be invalid or unenforceable by any court of competent jurisdiction, such part or provision shall be suspended and superseded by such applicable law, rule or regulation, and the remainder of this AGREEMENT shall not be affected thereby.

14. AMENDMENT. This AGREEMENT may only be amended by a written agreement executed by the Parties, and may not be amended by oral agreement. The District reserves the right to modify or terminate this AGREEMENT to comply with necessary changes to the applicable law or CalPERS requirements for employing retired annuitants.

15. NEGOTIATED AGREEMENT. The Parties acknowledge and agree that the terms and provisions of this AGREEMENT have been negotiated and discussed between the Parties, and this AGREEMENT reflects their mutual agreement regarding the subject matter of this AGREEMENT. Because of the nature of such negotiations and discussions, it would be inappropriate to deem any Party to be the drafter of this AGREEMENT and, therefore, no presumption for or against validity or as to any interpretation hereof, based upon the identity of the drafter shall be applicable in interpreting or enforcing this AGREEMENT.

16. EFFECTIVE DATE. The effective date of this AGREEMENT shall be the last date of the dates indicated below that reflects the date(s) that the Parties to this AGREEMENT signed this AGREEMENT.

17. NOTICES. Notices pursuant to AGREEMENT shall be given by deposit in the custody of the United States Postal Service, postage prepaid. Alternatively, notices required pursuant to this AGREEMENT may be personally served in the same manner as is applicable to civil judicial practice. Notice shall be deemed given as of the date of personal service or as of the date of deposit of such written notice in the course of transmission in the United States Postal Service.

18. GOVERNING LAW. This AGREEMENT shall be governed and construed in accordance with the laws of the State of California in full force and effect as of the date of execution.

19. ASSISTANCE OF COUNSEL. Miller and the District each warrant to the other Party that it has either had the assistance of counsel in negotiation for, and preparation of, this AGREEMENT or could have had such assistance and voluntarily declined to obtain it.

IN WITNESS WHEREOF, the Parties hereto have executed this AGREEMENT on the day and date first shown.

INTERIM DISTRICT MANAGER

Brett Miller

Date

SAN BENITO COUNTY WATER DISTRICT

Andrew Shelton, President

Date