



Office of the City Manager

SUPPLEMENTAL AGENDA MATERIAL for Supplemental Packet 1

Meeting Date: May 24, 2022

Item Number: 15

Item Description: Resolution Adopting the Resolution of Intention of Amendment to the Miscellaneous CalPERS Contract

Submitted by: Don E. Ellison, Interim Human Resources Director

The change is the addition of the amended CalPERS contract exhibit. CalPERS was unable to provide the amended contract until 5/17/2022. The City is out of compliance with the MOU.



EXHIBIT

California
Public Employees' Retirement System

AMENDMENT TO CONTRACT

**Between the
Board of Administration
California Public Employees' Retirement System
and the
City Council
City of Berkeley**

The Board of Administration, California Public Employees' Retirement System, hereinafter referred to as Board, and the governing body of the above public agency, hereinafter referred to as Public Agency, having entered into a contract effective March 1, 1942, and witnessed January 30, 1942, and as amended effective September 1, 1947, April 1, 1949, January 1, 1952, May 1, 1954, March 1, 1956, August 1, 1959, November 1, 1961, June 29, 1962, December 1, 1962, April 1, 1963, August 1, 1963, October 1, 1964, October 16, 1965, November 16, 1968, March 1, 1973, December 16, 1973, December 1, 1974, July 22, 1976, May 25, 1978, July 9, 1978, January 2, 1983, October 28, 1983, July 18, 1986, June 26, 1988, June 30, 1992, November 28, 1996, October 15, 1998, November 6, 1998, April 9, 1999, April 14, 2000, July 14, 2000, December 22, 2000, July 7, 2002, January 5, 2003, June 13, 2003, December 28, 2012, July 3, 2016, November 6, 2016, January 1, 2017, December 31, 2017, and April 17, 2022, which provides for participation of Public Agency in said System, Board and Public Agency hereby agree as follows:

- A. Paragraphs 1 through 20 are hereby stricken from said contract as executed effective April 17, 2022, and hereby replaced by the following paragraphs numbered 1 through 20 inclusive:
1. All words and terms used herein which are defined in the Public Employees' Retirement Law shall have the meaning as defined therein unless otherwise specifically provided. "Normal retirement age" shall mean age 55 for classic local miscellaneous members, age 62 for new local miscellaneous members, age 50 for classic local fire members and for those classic local police members entering membership in the police classification on or prior to December 28, 2012, age 55 for classic local police members entering membership for the first time in the police classification after December 28, 2012, and age 57 for new local safety members.

2. Public Agency shall participate in the Public Employees' Retirement System from and after March 1, 1942, making its employees as hereinafter provided, members of said System subject to all provisions of the Public Employees' Retirement Law except such as apply only on election of a contracting agency and are not provided for herein and to all amendments to said Law hereafter enacted except those, which by express provisions thereof, apply only on the election of a contracting agency.
3. Public Agency agrees to indemnify, defend and hold harmless the California Public Employees' Retirement System (CalPERS) and its trustees, agents and employees, the CalPERS Board of Administration, and the California Public Employees' Retirement Fund from any claims, demands, actions, losses, liabilities, damages, judgments, expenses and costs, including but not limited to interest, penalties and attorney fees that may arise as a result of any of the following:
 - (a) Public Agency's election to provide retirement benefits, provisions or formulas under this Contract that are different than the retirement benefits, provisions or formulas provided under the Public Agency's prior non-CalPERS retirement program.
 - (b) Any dispute, disagreement, claim, or proceeding (including without limitation arbitration, administrative hearing, or litigation) between Public Agency and its employees (or their representatives) which relates to Public Agency's election to amend this Contract to provide retirement benefits, provisions or formulas that are different than such employees' existing retirement benefits, provisions or formulas.
 - (c) Public Agency's agreement with a third party other than CalPERS to provide retirement benefits, provisions, or formulas that are different than the retirement benefits, provisions or formulas provided under this Contract and provided for under the California Public Employees' Retirement Law.
4. Employees of Public Agency in the following classes shall become members of said Retirement System except such in each such class as are excluded by law or this agreement:
 - a. Local Fire Fighters (herein referred to as local safety members);
 - b. Local Police Officers (herein referred to as local safety members);
 - c. Employees other than local safety members (herein referred to as local miscellaneous members).
5. In addition to the classes of employees excluded from membership by said Retirement Law, the following classes of employees shall not become members of said Retirement System:

- a. **PERSONS EMPLOYED JUNE 1, 1962, OR THEREAFTER IN THE FOLLOWING CLASSES IN THE RECREATION AND PARKS LIBRARY, AND FINANCE DEPARTMENTS:**

**ASSISTANT CAMP UTILITY MAN
CAMP CLERK
CAMP COUNSELOR
CAMP NURSE
CAMP SUPERVISOR
CAMP UTILITY MAN
CAMP RECREATION LEADER**

**COOK'S AIDE
CHIEF COOK
FIRST ASSISTANT COOK
KITCHEN HELPER
SECOND ASSISTANT COOK**

**DINING ROOM HELPER
DINING ROOM SUPERVISOR**

FIELD APPRAISER

**LIBRARY PAGE I
LIBRARY PAGE II**

LIFEGUARD

**ASSISTANT PLAYGROUND LEADER
PLAYGROUND LEADER
PLAYGROUND LEADER TRAINEE
SENIOR PLAYGROUND LEADER**

SPECIAL ACTIVITY LEADER;

- b. **PERSONS EMPLOYED APRIL 1, 1963, OR THEREAFTER AS POLICE TRAINEES;**
- c. **PHYSICIANS EMPLOYED AFTER AUGUST 1, 1963, CLASSIFIED AS "PHYSICIANS" IN THE CITY'S POSITION ORDINANCE AS THAT ORDINANCE EXISTED ON AUGUST 1, 1963;**
- d. **PERSONS COMPENSATED ON AN HOURLY BASIS WHO ENTER EMPLOYMENT WITH PUBLIC AGENCY ON OCTOBER 16, 1965, OR THEREAFTER; AND**

- e. EMPLOYEES WHO FIRST ENTERED PUBLIC AGENCY SERVICE PRIOR TO JANUARY 26, 1973, IN AN EMPLOYMENT IN WHICH THEY WERE ELIGIBLE FOR MEMBERSHIP IN ANY ONE OF THE PUBLIC AGENCY'S RETIREMENT SYSTEMS FOR SAFETY MEMBERS, AND WHO HAVE NOT EXECUTED AND FILED WITH THE PUBLIC AGENCY A WAIVER OF RIGHTS UNDER THE LOCAL SYSTEM DURING THE PERIOD PRESCRIBED, SUCH EXCLUSION SHALL APPLY WHETHER OR NOT THE EMPLOYEE REENTERS SERVICE OF THE PUBLIC AGENCY THEREAFTER.**
6. Those safety members in the local retirement system employed by Public Agency and who did not waive their rights under said local system were provided another opportunity to execute and file a waiver on or before October 28, 1983.
 7. Assets heretofore accumulated with respect to members in the local retirement system have been transferred to the Public Employees' Retirement System and applied against the liability for prior service incurred thereunder. That portion of the assets so transferred which represent the accumulated contributions (plus interest thereof) required of the employees under said local system has been credited to the individual membership account of each such employee under the Public Employees' Retirement System.
 8. Public Agency and the Berkeley Redevelopment Agency have agreed to a merger of their contracts, and this contract shall be a continuation of the benefits of the contract of the Berkeley Redevelopment Agency, pursuant to Section 20567.6 of the Government Code. Such merger is effective as of August 1, 1977. Public Agency, by this contract, assumes the assets and liabilities accumulated under the former contract of the Berkeley Redevelopment Agency. Legislation repealed said Section effective January 1, 1988.
 9. The percentage of final compensation to be provided for each year of credited prior and current service for classic local miscellaneous members in employment before and not on or after January 5, 2003, shall be determined in accordance with Section 21354 of said Retirement Law, subject to the reduction provided therein for service on and after January 5, 1957, the effective date of Social Security coverage, and prior to December 31, 1982, termination of Social Security, for members whose service has been included in Federal Social Security (2% at age 55 Full and Modified).
 10. The percentage of final compensation to be provided for each year of credited prior and current service for classic local miscellaneous members in employment on or after January 5, 2003, shall be determined in accordance with Section 21354.5 of said Retirement Law, subject to the reduction provided therein for service on and after January 5, 1957, the effective date of Social Security coverage, and prior to December 31, 1982, termination of Social Security, for members whose service has been included in Federal Social Security (2.7% at age 55 Full and Modified).

11. The percentage of final compensation to be provided for each year of credited prior and current service as a new local miscellaneous member shall be determined in accordance with Section 7522.20 of said Retirement Law (2% at age 62 Full).
12. The percentage of final compensation to be provided for each year of credited prior and current service as a classic local fire member and for those classic local police members entering membership in the police classification on or prior to December 28, 2012, shall be determined in accordance with Section 21362.2 of said Retirement Law (3% at age 50 Full).
13. The percentage of final compensation to be provided for each year of credited current service as a classic local police member entering membership for the first time in the police classification after December 28, 2012, shall be determined in accordance with Section 21363.1 of said Retirement Law (3% at age 55 Full).
14. The percentage of final compensation to be provided for each year of credited prior and current service as a new local safety member shall be determined in accordance with Section 7522.25(d) of said Retirement Law (2.7% at age 57 Full).
15. Public Agency elected and elects to be subject to the following optional provisions:
 - a. Section 21573 (Third Level of 1959 Survivor Benefits) for local miscellaneous members only.
 - b. Sections 21624, 21626 and 21628 (Post-Retirement Survivor Allowance).
 - c. Section 21536 (Local System Service Credit Included in Basic Death Benefit).
 - d. Section 21222.1 (One-Time 5% Increase - 1970) for local miscellaneous members only. Legislation repealed said Section effective January 1, 1980.
 - e. Section 21222.2 (One-Time 5% Increase - 1971). Legislation repealed said Section effective January 1, 1980.
 - f. Section 20042 (One-Year Final Compensation) for classic local miscellaneous members, classic local fire members and for those classic local police members entering membership on or prior to December 28, 2012.
 - g. Section 20965 (Credit for Unused Sick Leave).
 - h. Section 21574 (Fourth Level of 1959 Survivor Benefits) for local police members only.

- i. Section 21548 (Pre-Retirement Option 2W Death Benefit) for local police members only.
- j. Section 21024 (Military Service Credit as Public Service).
- k. Section 21023.5 (Public Service Credit for Peace Corps, AmeriCorps VISTA, or AmeriCorps Service).
- l. Section 21574.5 (Indexed Level of 1959 Survivor Benefits) for local fire members only.
- m. Section 20475 (Different Level of Benefits): Section 21363.1 (3% @ 55 Full formula) and Section 20037 (Three-Year Final Compensation) are applicable to classic local police members entering membership for the first time with this agency in the police classification after December 28, 2012.
- n. Section 20516 (Employees Sharing Additional Cost):
 - From and after July 3, 2016, 1.25% for local miscellaneous members in the International Brotherhood of Electrical Workers Local 1245.
 - From and after November 6, 2016, 8% for classic local miscellaneous members in the Public Employees Union Local 1.
 - From and after November 6, 2016, and until April 17, 2022, 8% for new local miscellaneous members in the Public Employees Union Local 1.
 - From and after January 1, 2017, 8% for classic local miscellaneous members in the Community Services & Part-Time Recreation Leaders Association Local 1021.
 - From and after January 1, 2017, and until April 17, 2022, 8% for new local miscellaneous members in the Community Services & Part-Time Recreation Leaders Association Local 1021.
 - From and after December 31, 2017, 8% for classic local miscellaneous members in the Unrepresented Employees Group.
 - From and after December 31, 2017, and until April 17, 2022, 8% for new local miscellaneous members in the Unrepresented Employees Group.
 - From and after December 31, 2017, 8% for classic local miscellaneous members in the Service Employees International Union Local 1021 Maintenance and Clerical Chapters.
 - From and after December 31, 2017, and until April 17, 2022, 8% for new local miscellaneous members in the Service Employees International Union Local 1021 Maintenance and Clerical Chapters.

From and after April 17, 2022, and until the effective date of this amendment to contract, 5% for new local miscellaneous members in the Public Employees Union Local 1.

From and after April 17, 2022, and until the effective date of this amendment to contract, 5% for new local miscellaneous members in the Community Services & Part-Time Recreation Leaders Association Local 1021.

From and after April 17, 2022, and until the effective date of this amendment to contract, 7% for new local miscellaneous members in the Unrepresented Employees Group.

From and after April 17, 2022, and until the effective date of this amendment to contract, 7% for new local miscellaneous members in the Service Employees International Union Local 1021 Maintenance and Clerical Chapters.

From and after the effective date of this amendment to contract, 1% for new local miscellaneous members in the Public Employees Union Local 1.

From and after the effective date of this amendment to contract, 1% for new local miscellaneous members in the Community Services & Part-Time Recreation Leaders Association Local 1021.

From and after the effective date of this amendment to contract, 6% for new local miscellaneous members in the Unrepresented Employees Group.

From and after the effective date of this amendment to contract, 6% for new local miscellaneous members in the Service Employees International Union Local 1021 Maintenance and Clerical Chapters.

The portion of the employer's contribution that the member agrees to contribute from his or her compensation, over and above the member's normal contribution ("Cost Sharing Percentage"), shall not exceed the Employer Normal Cost Rate, as that rate is defined in the CalPERS Actuarial Valuation for the relevant fiscal year. If the Cost Sharing Percentage will exceed the relevant Employer Normal Cost Rate, the Cost Sharing Percentage shall automatically be reduced to an amount equal to, and not to exceed, the Employer Normal Cost Rate for the relevant fiscal year.

16. Public Agency, in accordance with Government Code Section 20834, shall not be considered an "employer" for purposes of the Public Employees' Retirement Law. Contributions of the Public Agency shall be fixed and determined as provided in Government Code Section 20834, and such contributions hereafter made shall be held by the Board as provided in Government Code Section 20834.

17. Public Agency shall contribute to said Retirement System the contributions determined by actuarial valuations of prior and future service liability with respect to local miscellaneous members and local safety members of said Retirement System.
18. Public Agency shall also contribute to said Retirement System as follows:
 - a. Contributions required per covered member on account of the 1959 Survivor Benefits provided under Section 21573 of said Retirement Law. (Subject to annual change.) In addition, all assets and liabilities of Public Agency and its employees shall be pooled in a single account, based on term insurance rates, for survivors of all local miscellaneous members.
 - b. Contributions required per covered member on account of the 1959 Survivor Benefits provided under Section 21574 of said Retirement Law. (Subject to annual change.) In addition, all assets and liabilities of Public Agency and its employees shall be pooled in a single account, based on term insurance rates, for survivors of all local police members.
 - c. Contributions required per covered member on account of the 1959 Survivor Benefits provided under Section 21574.5 of said Retirement Law. (Subject to annual change.) In addition, all assets and liabilities of Public Agency and its employees shall be pooled in a single account, based on term insurance rates, for survivors of all local fire members.
 - d. A reasonable amount, as fixed by the Board, payable in one installment within 60 days of date of contract to cover the costs of administering said System as it affects the employees of Public Agency, not including the costs of special valuations or of the periodic investigation and valuations required by law.
 - e. A reasonable amount, as fixed by the Board, payable in one installment as the occasions arise, to cover the costs of special valuations on account of employees of Public Agency, and costs of the periodic investigation and valuations required by law.
19. Contributions required of Public Agency and its employees shall be subject to adjustment by Board on account of amendments to the Public Employees' Retirement Law, and on account of the experience under the Retirement System as determined by the periodic investigation and valuation required by said Retirement Law.

20. Contributions required of Public Agency and its employees shall be paid by Public Agency to the Retirement System within fifteen days after the end of the period to which said contributions refer or as may be prescribed by Board regulation. If more or less than the correct amount of contributions is paid for any period, proper adjustment shall be made in connection with subsequent remittances. Adjustments on account of errors in contributions required of any employee may be made by direct payments between the employee and the Board.

B. This amendment shall be effective on the _____ day of _____, _____.

BOARD OF ADMINISTRATION
PUBLIC EMPLOYEES' RETIREMENT SYSTEM

CITY COUNCIL
CITY OF BERKELEY

BY _____
MELODY BENAVIDES, CHIEF
PENSION CONTRACTS AND PREFUNDING
PROGRAMS DIVISION
PUBLIC EMPLOYEES' RETIREMENT SYSTEM

BY _____
PRESIDING OFFICER

Witness Date

Attest:

Clerk