



Berkeley Housing Authority

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Office of the Executive Director

Item 6B
NEW BUSINESS
June 14, 2012

To: Honorable Chairperson and
Members of the Berkeley Housing Authority Board

From: *Tia Ingram*
Tia M. Ingram, Executive Director

Subject: CalPERS Retirement Plan Contract for BHA Employees

RECOMMENDATION

Approve a resolution, authorizing execution of a retirement plan contract, and any related documents, with California Public Employees' Retirement System for Berkeley Housing Authority employees, effective June 24, 2012.

BACKGROUND

Berkeley Housing Authority (BHA) employees were employed by the City of Berkeley until July 2007. On June 12, 2007, the City of Berkeley City Council, as part of the actions taken to create the independent Berkeley Housing Authority, adopted Resolution No. 63,714-N.S. that provided for a financial subsidy to the BHA for a two-year period conditioned on several requirements that included in pertinent part:

1. The BHA Board adopts the City Council's recommendation for a transition plan for BHA operations including the conditions concerning the employee protections described above (i.e., in the staff report) for both temporary and permanent BHA staff; and
2. The City unions represent the additional permanent new classifications, which will also be subject to the City's existing union contracts, with minor modifications to reflect the different governance structure.

The City of Berkeley has had a contract with CalPERS to provide pension benefits to non-sworn career benefitted employees since March 1, 1942. Since the independent BHA was established on July 1, 2007, all full time benefitted employees of BHA have been included in the CalPERS benefit under the City's contract with CalPERS. Labor contracts covering BHA employees have included the provision for pension benefits under CalPERS.

Since the actions establishing the BHA as an independent entity were conditioned on protecting employees and providing that the employees would be subject to Union contracts based on the City's contracts with minor modifications reflecting the differing governance structure, the direction has been clear that it is necessary for the employees to be covered by CalPERS.

CalPERS has informed BHA that its' employees cannot remain under the City of Berkeley contract with CalPERS and that since it is a separate legal entity it must have its own contract.

Administrative steps have been taken to establish a contract for benefits as provided in Section 20508 (Succeeding Agency) of the Public Employees' Retirement Law (PERL). This Section of the PERL includes a provision that if a succeeding agency is or becomes a contracting agency, the contract of the former agency shall be merged into the contract of the succeeding agency. These provisions include Section 21354.5 (2.7% at age 55 Full Formula), Government Code Section 20938 (Limit Prior Service to Members Employed on Contract Date) Government Code Section 20042 (One-Year Final Compensation, Sections 21624 and 21626 (Post retirement Survivor Allowance) with 100% prior service for local miscellaneous members.

The Process to Date

What follows is a summary of the steps/actions taken by staff and/or approved by the Board, that lead to the proposed new CalPERS contract:

- a. New Agency application (Mar 2011). The process officially started in March 2011, when we submitted a survey, and initiated the application process. The next step was delayed by several months due to lack of action by CalPERS.
- b. Actuarial Valuation. To determine the employer rate (contribution) that would be required to pre-fund retirement benefits, an actuarial valuation was required by CalPERS. BHA submitted data on all employees (name, age, years of service) and CalPERS performed the study. CalPERS requires that contracting agencies with less than 100 active members be covered through a risk pool of other contracting agencies with the same benefit provision. The analysis resulted in a determination that an initial employer contribution rate of 16.839%. Note – pensionable contributions have been made on behalf of BHA employees at the rate of 15.944% in Fiscal Year 2008, 16.293% in Fiscal Year 2009, 16.004% in Fiscal Year 2010, 16.295% in Fiscal Year 2011, 19.047% in Fiscal Year 2012, creating an actuarial value of assets \$1,197,106 as of June 30, 2010 which is the date the CalPERS actuarial valuation is based. These assets will be separated from the City of Berkeley pension plan and will accrue to the new Berkeley Housing Authority pension plan.
- c. Schedule of Actions (Dec 2011). CalPERS advised required activities, and specific timelines to obtain approval of a new contract. In December, 2011, BHA responded, as required advising the anticipated schedule for all required activities. Of significance, we anticipated final adoption by the Board in March 2012. This information was shared with the Board on February 9, 2012.
- d. Resolution of Intent (Feb 2012). At the regular meeting in February, the Board approved "Resolution of Intent", affirming our interest in pursuing a CalPERS retirement contract with the following benefits:
 - a. 2.7% @ 55 full formula (same as COB)
 - b. Government Code Section 20938 (Limited Prior Year Service to Members Employed on Contract Date) (same as COB);
 - c. Government Code Section 20042 (One-Year Final Compensation) (same as COB)
 - d. Government Code Sections 21624 and 21626 (Post-Retirement Survivor Allowance) with 100% Prior service for local miscellaneous members (minor variation)
- e. Election by Employees (February 2012). As required by CalPERS, and requested by SEIU, Local 1021, all BHA employees were provided a copy of the plan benefits for their

consideration prior to the mandatory election (Attachment 1). Employees were asked to signify their approval (vote) on two critical issues:

- a. Acceptance of the CalPERS contract as presented:
all of the eligible 11 employees voted yes; and
- b. Optional acceptance of the Survivors Benefits plan:
all but one of the eligible employees voted to participate. Note: future hires will be required to accept, and pay into the plan.

The election results have been submitted to CalPERS in anticipation of the contract. At this time, we cannot change the plan which was presented to, voted upon by the employees, and submitted to CalPERS without significant consequences and delays. The immediate consequence would be that BHA would have to start the process all over again and obtain a new actuarial evaluation, as the current valuation is only good until June 30, 2012. This would also cause a significant amount of litigation with the Unions. It would also delay the payroll transfer to ADP.

Next Steps

Final Resolution

The next step is for the Board to acknowledge the prior actions, and in particular the employee election, and authorize execution of contract documents – adoption of a “final resolution.” Note- authorizing the contract will commit BHA to a CalPERS retirement plan, and a specific monthly contribution. It does not determine the amount of the employer or employee contribution; those amounts are subject to our labor contracts (both expire in June 2012).

BHA CalPERS Contract. The earliest effective date of the new CalPERS contract is the start of the pay period following adoption of the Final Resolution. We propose an effective date of June 24, 2012, the beginning of the first pay period having a paycheck in the new fiscal year (pay day being July 13, 2012).

Other

This action formalizes adoption of a new, independent retirement plan for BHA employees. We are in talks with another division of CalPERS, Health Partnership, regarding procuring a health benefit program for BHA employees.

FISCAL IMPACTS OF RECOMMENDATIONS

Based on the estimated employer contribution rate, we anticipate a reduction in annual employer contribution of \$32,000.

CONTACT PERSON

Tia M. Ingram, Executive Director, (510) 981-5471
Jesy Yturralde, Finance Manager, (510) 981-5488

Attachments:

1. Plan Benefit (provided to employees prior to internal election to adopt CalPERS plan)
2. Resolution
3. Contract

CALIFORNIA PUBLIC EMPLOYEES' RETIREMENT SYSTEM

Actuarial and Employer Services Branch
Public Agency Contract Services
(888) CalPERS (225-7377)

ATTACHMENT 1

SUMMARY OF MAJOR PROVISIONS

**2.7% @ 55 Formula (Section 21354.5)
Local Miscellaneous Members**

SERVICE RETIREMENT

To be eligible for service retirement, a member must be at least age 50 and have five years of CalPERS credited service. There is no compulsory retirement age.

The monthly retirement allowance is determined by age at retirement, years of service credit and final compensation. The basic benefit is 2.7% of final compensation for each year of credited service upon retirement at age 55. If retirement is earlier than age 55, the percentage of final compensation decreases for each quarter-year of attained age to 2% at age 50.

Final compensation is the average monthly pay rate during the last consecutive 36 months of employment, or 12 months if provided by the employer's contract, unless the member designates a different period of 36 or 12 consecutive months when the average pay rate was higher.

DISABILITY RETIREMENT

Members substantially incapacitated from performing the usual duties for the position for his/her current employer, and from performing the usual duties of the position for other CalPERS covered employers (including State agencies, schools, and local public agencies), and where similar positions with these other employers with reasonably comparable in pay, benefits, and promotional opportunities are not available, would be eligible for disability retirement provided they have at least five years of service credit. The monthly retirement allowance is 1.8% of final compensation for each year of service. The maximum percentage for members who have between 10.000 and 18.518 years of service credit is one-third of their final compensation. If the member is eligible for service retirement the member will receive the highest allowance payable, service or disability. If provided by the employer's contract, the benefit would be a minimum of 30% of final compensation for the first five years of service credit, plus 1% for each additional year of service to a maximum benefit of 50% of final compensation.

INDUSTRIAL DISABILITY RETIREMENT

If provided by the employer's contract, members permanently incapacitated from performing their duties, as defined above under Disability Retirement, and the disability is a result of a job-related injury or illness may receive an Industrial Disability Retirement benefit equal to 50% of their final compensation. If provided in the employer's contract and the member is totally disabled, the disability retirement allowance would equal 75% of final compensation in lieu of the disability retirement allowance otherwise provided. If the member is eligible for service retirement, the service retirement allowance is payable. The total allowance cannot exceed 90% of final compensation.

PRE-RETIREMENT DEATH BENEFITS

Basic Death Benefit: This benefit is a refund of the member's contributions plus interest and up to six months' pay (one month's salary rate for each year of current service to a maximum of six months).

1957 Survivor Benefit: An eligible beneficiary may elect to receive either the Basic Death Benefit or the 1957 Survivor Benefit. The 1957 Survivor Benefit provides a monthly allowance equal to one-half of the highest service retirement allowance the member would have received had he/she retired on the date of death. The 1957 Survivor Benefit is payable to the surviving spouse or registered domestic partner until death or to eligible unmarried children until age 18.

1959 Survivor Benefit: (If provided by the employer's contract and the member is not covered under social security.) A surviving spouse or registered domestic partner and eligible children may receive a monthly allowance as determined by the level of coverage. This benefit is payable in addition to the Basic Death Benefit or 1957 Survivor Benefit. Children are eligible if under age 22 and unmarried.

Pre-Retirement Optional Settlement 2 Death Benefit: (If provided by the employer's contract.) The spouse or registered domestic partner of a deceased member, who was eligible to retire for service at the time of death, may elect to receive the Pre-Retirement Optional Settlement 2 Death Benefit in lieu of the lump sum Basic Death Benefit. The benefit is a monthly allowance equal to the amount the member would have received if he/she had retired for service on the date of death and elected Optional Settlement 2, the highest monthly allowance a member can leave a spouse or registered domestic partner.

COST-OF-LIVING ADJUSTMENTS

The cost of living allowance increases are limited to a maximum of 2% compounded annually unless the employer's contract provides a 3, 4, or 5% increase.

DEATH AFTER RETIREMENT

The lump sum death benefit is \$500 (or \$600, \$2,000, \$3,000, \$4,000 or \$5,000 if provided by the employer's contract) regardless of the retirement plan chosen by the member at the time of retirement.

TERMINATION OF EMPLOYMENT

Members who have separated from employment may elect to leave their contributions on deposit or request a refund of contributions and interest. Those who leave their contributions on deposit may apply at a later date for a monthly retirement allowance if the minimum service and age requirements are met. Members who request a refund of their contributions terminate their membership and are not eligible for any future benefits unless they return to CalPERS membership.

EMPLOYEE CONTRIBUTIONS

Miscellaneous members covered by the 2.7% @ 55 formula contribute 8% of reportable earnings. Those covered under a modified formula (coordinated with Social Security) do not contribute on the first \$133.33 earned.

The employer also contributes toward the cost of the benefits. The amount contributed by the employer for current service retirement benefits generally exceeds the cost to the employee. In addition, the employer bears the entire cost of prior service benefits (the period of time before the employer provided retirement coverage under CalPERS). All employer contribution rates are subject to adjustment by the CalPERS Board of Administration.

CALIFORNIA PUBLIC EMPLOYEES' RETIREMENT SYSTEM

Actuarial and Employer Services Branch

Public Agency Contract Services

Fourth Level 1959 Survivor Benefits Ballot

(888) CalPERS (225-7377)

Employee Name: _____

Social Security Number: _____ / _____ / _____

For use by members employed by _____
who are not covered by Social Security on the effective date of the enacting contract to
elect to be covered by CalPERS 1959 Survivor Benefits or not to be covered by
CalPERS 1959 Survivor Benefits.

~~Please be advised that your election to be covered by the 1959 Survivor Benefits is
irrevocable and will remain in effect until you retire, change employers, terminate your
membership in CalPERS, or come under Social Security coverage.~~

As an employee eligible to participate in this election, should you choose not to be
covered by the 1959 Survivor Benefits at this time, you will be provided a second
opportunity to elect the coverage within a three month period beginning nine months
following the effective date of the agency's contract for such coverage. This second
election will provide an opportunity to elect the 1959 Survivor Benefits, however, it will
not provide an opportunity to cancel a previous election for 1959 Survivor Benefits
coverage.

BEFORE MAKING ELECTION PLEASE READ IMPORTANT INFORMATION ON PAGE 2

**FAILURE TO EXECUTE AND RETURN THIS FORM TO YOUR AGENCY ON OR BEFORE
_____ SHALL BE DEEMED AN ELECTION NOT TO BE
COVERED BY CalPERS 1959 SURVIVOR BENEFITS.**

Vote by marking only one of the spaces provided below which indicates your choice:

- I elect to be covered by CalPERS 1959 Survivor Benefits, as set forth in
Section 21574.

- I elect not to be covered by CalPERS 1959 Survivor Benefits, as set forth
in Section 21574.

Signature

Date

A

**Summary of Provisions
Fourth Level of 1959 Survivor Benefits
Government Code Section 21574**

The 1959 Survivor Benefits are paid monthly to certain survivors of a member who dies before retirement. The covered member's survivors receive the following monthly allowances regardless of whether the member was eligible to retire at the time of death.

Surviving spouse or domestic partner with two or more dependent children; or three or more dependent children alone \$2,280

Surviving spouse or domestic partner with one dependent child; or two dependent children alone \$1,900

One dependent child; or surviving spouse or domestic partner at age 60, or older; or dependent parents \$ 950

Definitions of Survivors

A dependent child is one under the age of 22 and unmarried, or a disabled child of any age whose disability began before and has continued without interruption after attainment of age 22.

Concurrent Benefits

The 1959 Survivor Benefits would be payable in addition to the following benefits, if applicable:

Basic Death Benefit - This benefit is a refund of the member's contributions plus interest and up to six month's pay (one month's salary rate for each year of service up to a maximum of six months).

1957 Survivor Benefit - This benefit is a monthly allowance equal to one-half of the unmodified retirement allowance the member would have received had he/she retired on the date of death.

Special Death Benefit (applies to local safety members only) - This benefit is a monthly allowance equal to one-half of your final compensation. The 1959 Survivor Benefits payable in any month shall be reduced by the amount of the Special Death Benefit.

Cost To The Employee

The cost to the employee is \$2.00 monthly (non-refundable), in addition to normal retirement contributions.

B

BERKELEY HOUSING AUTHORITY

RESOLUTION AUTHORIZING A CONTRACT

No. _____

WHEREAS, the Public Employees' Retirement Law provides for the participation of a Public Agency in the California Public Employees' Retirement System, making its employees members of said System; and

WHEREAS, the Board of Commissioners of the Berkeley Housing Authority on _____, _____, adopted a Resolution giving notice of intention to approve a contract providing for such participation; and

WHEREAS, the employees of said public agency, whose memberships in said Retirement System are contemplated, have approved said participation, by majority vote;

NOW, THEREFORE, BE IT RESOLVED, that a contract between the Board of Commissioners of the Berkeley Housing Authority and the Board of Administration, California Public Employees' Retirement System is hereby authorized, a copy of said contract being attached hereto and by such reference made a part hereof as though herein set out in full; and

NOW, THEREFORE, BE IT FURTHER RESOLVED, that the presiding officer of said governing body is hereby authorized, empowered and directed to execute said contract for and on behalf of said public agency.

Adopted this _____ day of _____, _____.

Presiding Officer

Attest:

Clerk or Secretary



California
Public Employees' Retirement System



CONTRACT

Between the
Board of Administration
California Public Employees' Retirement System
and the
Board of Commissioners
Berkeley Housing Authority



In consideration of the covenants and agreement hereafter contained and on the part of both parties to be kept and performed, the governing body of above public agency, hereafter referred to as "Public Agency", and the Board of Administration, Public Employees' Retirement System, hereafter referred to as "Board", hereby agree as follows:

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 local miscellaneous members.
2. Public Agency shall participate in the Public Employees' Retirement System from and after _____ 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 attorneys 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) Public Agency's election to amend this Contract to provide retirement benefits, provisions or formulas that are different than 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.
 - (d) Public Agency's election to file for bankruptcy under Chapter 9 (commencing with section 901) of Title 11 of the United States Bankruptcy Code and/or Public Agency's election to reject this Contract with the CalPERS Board of Administration pursuant to section 365, of Title 11, of the United States Bankruptcy Code or any similar provision of law.
 - (e) Public Agency's election to assign this Contract without the prior written consent of the CalPERS' Board of Administration.
 - (f) The termination of this Contract either voluntarily by request of Public Agency or involuntarily pursuant to the Public Employees' Retirement Law.
 - (g) Changes sponsored by Public Agency in existing retirement benefits, provisions or formulas made as a result of amendments, additions or deletions to California statute or to the California Constitution.

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. Employees other than local safety members (herein referred to as local miscellaneous members).

5. Any exclusion(s) shall remain in effect until such time as the Public Employees' Retirement System determines that continuing said exclusion(s) would risk a finding of non-compliance with any federal tax laws or regulations. If such a determination is contemplated, the Public Employees' Retirement System will meet with the Public Agency to discuss the matter and coordinate any required changes or amendments to the contract.

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. SAFETY EMPLOYEES.

6. This contract shall be a continuation of the contract of the Housing Authority Function of the City of Berkeley, hereinafter referred to as "Former Agency". The accumulated contributions, assets and liability for prior and current service under the Former Agency's contract shall be merged pursuant to Section 20508 of the Government Code. Such merger occurred October 27, 2008.
7. The percentage of final compensation to be provided for each year of credited prior and current service as a local miscellaneous member shall be determined in accordance with Section 21354.5 of said Retirement Law (2.7% at age 55 Full).
8. Public Agency elects to be subject to the following optional provisions:
 - a. Section 20938 (Limit Prior Service to Members Employed on Contract Date).
 - b. Section 20042 (One-Year Final Compensation).
 - c. Sections 21624 and 21626 (Post-Retirement Survivor Allowance).
9. 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 of said Retirement System.
10. 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 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 miscellaneous members.

- b. 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.
 - c. 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.
11. 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.
12. 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.

**BOARD OF ADMINISTRATION
PUBLIC EMPLOYEES' RETIREMENT SYSTEM**

**BOARD OF COMMISSIONERS
BERKELEY HOUSING AUTHORITY**

BY _____
KAREN DE FRANK, CHIEF
EMPLOYER SERVICES DIVISION
PUBLIC EMPLOYEES' RETIREMENT SYSTEM

BY _____
PRESIDING OFFICER

Witness Date

Attest:

Clerk