



CITY COUNCIL AGENDA REPORT

MEETING DATE: OCTOBER 16, 2012

ITEM NUMBER: NB-1

SUBJECT: AMENDMENT TO THE CONTRACT BETWEEN CALPERS AND THE CITY OF COSTA MESA TO INCLUDE PROVISIONS PURSUANT TO GOVERNMENT CODE SECTION 20475 IMPLEMENTING THE 2%@50 RETIREMENT FORMULA FOR FIRE SAFETY EMPLOYEES

DATE: OCTOBER 16, 2012

FROM: CEO's OFFICE/HUMAN RESOURCES DIVISION

PRESENTATION BY: LANCE M. NAKAMOTO, HUMAN RESOURCES MANAGER
RYAN L. THOMAS, PRINCIPAL HUMAN RESOURCES ANALYST

FOR FURTHER INFORMATION CONTACT: LANCE M. NAKAMOTO AT (714) 754-5172
RYAN THOMAS AT (714) 754-5104

RECOMMENDATION:

- 1) Adopt a Resolution of Intention to approve an Amendment to the Contract between the Board of Administration of the California Public Employees' Retirement System (CalPERS) and the City Council of the City of Costa Mesa (Attachment I) in order to implement the lower-level retirement formula of 2%@50 for Fire Safety employees.
- 2) Introduce, give first reading to be read by title only to, and waive further reading of Ordinance No. 12- (Attachment II), which authorizes the amendment to the CalPERS contract to implement the 2%@50 retirement formula for Fire Safety employees.
- 3) Authorize the City Clerk to execute required CalPERS certifications:
 - a. Certification of Governing Body's Action – PERS-CON-12 (Attachment III).
 - b. Certification of Compliance with Government Code Section 7507 PERS-CON-12A (Attachment IV).
 - c. Certification of Compliance with Government Code Section 20475 – PERS-CON-30 (Attachment V).

BACKGROUND:

Presently, the City of Costa Mesa contracts with CalPERS for a 3% @ 50 retirement plan for Fire Safety employees. At the City Council Meeting on September 4, 2012, the City Council adopted Side Letters of Agreement (LOA) with the Costa Mesa Fire Association (CMFA) and Costa Mesa Fire Management Association (CMFMA). The

LOA amends the existing CMFA Memorandum of Understanding (MOU) by adding that the City will implement the 2%@50 CalPERS Benefit Formula for new sworn Fire employees. New employees covered by the 2%@50 CalPERS Benefit Formula shall contribute 9% of the employee's PERSable earnings towards their employee retirement contribution. Assembly Bill 340, also known as the California Employees' Pension Reform Act, passed by the legislature and signed by the Governor provides that effective January 1, 2013 new CalPERS members will receive lower retirement formulas. Prospectively, in the event the City was to hire existing or current CalPERS members (laterals), they would be covered by the 2%@50 formula.

ANALYSIS:

In order to process contract amendments involving benefits with CalPERS, the City must first request preparation of a special valuation from CalPERS that discloses the costs (or savings) of the specific benefit being requested. This is required in order to disclose costs (or savings) to the public during the next step, the contract amendment process. Once the valuation is received by the City, a request is made to CalPERS to begin the contract amendment process. It takes approximately 30 days from the date of request for CalPERS to prepare and deliver the required contract amendment documents.

CalPERS requires that clearly defined procedures established by State statute be followed for contract amendments. The following are regulations required by CalPERS in order to complete the contract amendment process:

1. A Resolution of Intention must be approved by the City Council, and a first reading of the Ordinance authorizing an amendment to the contract must occur. In addition, authorization for the City Clerk to provide "Certification of Governing Body's Action", "Certification of Compliance with Government Code Section 7507" and "Certification of Compliance with Government Code Section 20475" are required.
2. A final reading of the Ordinance and a City Council vote on adoption must occur at least twenty (20) days after the adoption of the Resolution of Intention (November 20, 2012 City Council Meeting).
3. The effective date of the contract amendment must be the first day of a payroll period and may not be earlier than the day after the effective date of the Ordinance. Therefore, the effective date of the contract would be December 30, 2012, the first day of the next pay period.

ALTERNATIVES CONSIDERED:

The implementation of this second tier retirement plan is the City's obligation under the LOA that was agreed to by both parties. Any other alternatives that the City Council would like to discuss with CMFA or CMFMA would have to be done through the meet and confer process.

FISCAL REVIEW:

The employer contribution rate will be 19.204% of reportable earnings for local fire members entering membership for the first time in the fire classification after the effective date of this amendment to contract.

The immediate total fiscal impact is unknown at this time due to fact that the 2%@50 benefit will only be given to new employees. However, the 2%@50 benefit is less expensive and therefore will cost less than the current 3%@50 benefit.

In the meantime, the City may have less active participants in the 3%@50 plan, which may increase PERS rates for that plan, but the total retirement cost to the City should remain constant before reducing over time.

Also, the lower benefit should also provide lower total liabilities and therefore help reduce total unfunded liabilities the City currently has and would continue to have if new hires were provided the 3%@50 benefit. Plans with this lower benefit would also be less volatile during periods of economic recession and therefore more stable.

LEGAL REVIEW:

The City Attorney's Office has reviewed the attached documents and, where appropriate, approved them as to form.

CONCLUSION:

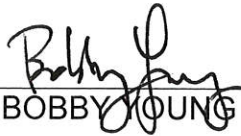
In order to amend the CalPERS contract to establish a second tier 2%@50 retirement formula for new hires within the safety fire employees group, the following must occur: adoption of the "Resolution of Intention to Approve an Amendment to the Contract between the Board of Administration of the California Public Employees' Retirement System and the City Council of the City of Costa Mesa"; introduction and first reading of the Ordinance authorizing the amendment to the contract to implement Government Code Section 20475 ; and authorization given to the City Clerk to execute required CalPERS certifications.



LANCE M. NAKAMOTO
Human Resources Manager



RICHARD FRANCIS
Assistant Chief Executive Officer



BOBBY YOUNG
Director of Finance and I.T.



TOM DUARTE
City Attorney

DISTRIBUTION: CEO
Assistant CEO
City Attorney
City Clerk
Assistant Finance Director
Budget and Research Manager

ATTACHMENTS: I Resolution of Intention and Exhibit Amendment to Contract
II Ordinance No. ____
III Certification of Governing Body's Action (PERS-CON-12)
IV Certification of Compliance with Government Code Section 7507
V Certification of Compliance with Government Code Section 20475

**RESOLUTION OF INTENTION
TO APPROVE AN AMENDMENT TO CONTRACT
BETWEEN THE
BOARD OF ADMINISTRATION
CALIFORNIA PUBLIC EMPLOYEES' RETIREMENT SYSTEM
AND THE
CITY COUNCIL
CITY OF COSTA MESA**

WHEREAS, the Public Employees' Retirement Law permits the participation of public agencies and their employees in the Public Employees' Retirement System by the execution of a contract, and sets forth the procedure by which said public agencies may elect to subject themselves and their employees to amendments to said Law; and

WHEREAS, one of the steps in the procedures to amend this contract is the adoption by the governing body of the public agency of a resolution giving notice of its intention to approve an amendment to said contract, which resolution shall contain a summary of the change proposed in said contract; and

WHEREAS, the following is a statement of the proposed change:

To provide Section 20475 (Different Level of Benefits), Section 21362 (2% @ 50 Full formula) and Section 20037 (Three-Year Final Compensation) without Sections 21624 and 21626 (Post-Retirement Survivor Allowance) without Section 20516 (Employees Sharing the Cost of Additional Benefits) applicable to local fire members entering membership for the first time in the fire classification after the effective date of this amendment to contract.

NOW, THEREFORE, BE IT RESOLVED that the governing body of the above agency does hereby give notice of intention to approve an amendment to the contract between said public agency and the Board of Administration of the Public Employees' Retirement System, a copy of said amendment being attached hereto, as an "Exhibit" and by this reference made a part hereof.

By: _____
Presiding Officer

Title

Date adopted and approved



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 Costa Mesa

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 August 13, 1978, and witnessed August 7, 1978, and as amended effective July 15, 1979, October 25, 1987, October 30, 1992, September 18, 1994, January 4, 1996, June 22, 1998, June 16, 2000, December 31, 2000, May 20, 2001, December 19, 2002, September 28, 2008, August 20, 2009, June 6, 2010, February 27, 2011 and March 11, 2012 which provides for participation of Public Agency in said System, Board and Public Agency hereby agree as follows:

- A. Paragraphs 1 through 17 are hereby stricken from said contract as executed effective March 11, 2012, and hereby replaced by the following paragraphs numbered 1 through 18 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 local miscellaneous members entering membership in the miscellaneous classification on or prior to March 11, 2012 and age 60 for local miscellaneous members entering membership for the first time in the miscellaneous classification after March 11, 2012; age 50 for local police members and for those local fire members entering membership in the fire classification on or prior to the effective date of this contract to amendment and age 55 for local fire members entering membership for the first time in the fire classification after the effective date of this contract to amendment.

2. Public Agency shall participate in the Public Employees' Retirement System from and after August 13, 1978 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. 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:

NO ADDITIONAL EXCLUSIONS

6. Assets heretofore accumulated with respect to members in the local retirement system have been transferred to the Public Employees' Retirement System on September 18, 1994 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.
7. Benefits paid to pensioner or annuitants under the local system on or prior to September 18, 1994 shall be continued and paid at their existing rates by the Public Employees' Retirement System as authorized by Section 20481 of the Government Code.
8. The percentage of final compensation to be provided for local miscellaneous members in employment before and not on or after September 28, 2008 for each year of credited prior service is 0% and the percentage of final compensation to be provided for each year of credited current service is 100% and determined in accordance with Section 21354 of said Retirement Law (2% at age 55 Full).

9. The percentage of final compensation to be provided for local miscellaneous members in employment on or after September 28, 2008 and not entering membership for the first time in the miscellaneous classification after March 11, 2012 for each year of credited prior service is 0% and the percentage of final compensation to be provided for each year of credited current service is 100% and determined in accordance with Section 21354.4 of said Retirement Law (2.5% at age 55 Full).
10. The percentage of final compensation to be provided for each year of credited current service as a local miscellaneous member entering membership for the first time in the miscellaneous classification after March 11, 2012 shall be determined in accordance with Section 21353 of said Retirement Law (2% at age 60 Full).
11. The percentage of final compensation to be provided for each year of credited prior and current service as a local police member and for those local fire members entering membership in the fire classification on or prior to the effective date of this amendment to contract shall be determined in accordance with Section 21362.2 of said Retirement Law (3% at age 50 Full).
12. The percentage of final compensation to be provided for each year of credited current service as a local fire member entering membership for the first time in the fire classification after the effective date of this amendment to contract shall be determined in accordance with Section 21362 of said Retirement Law (2% at age 50 Full).
13. Public Agency elected and elects to be subject to the following optional provisions:
 - a. Section 20042 (One-Year Final Compensation) for local miscellaneous members, local police members and for those local fire members entering membership on or prior to the effective date of this amendment to contract.
 - b. Section 20965 (Credit for Unused Sick Leave).
 - c. Sections 21624 and 21626 (Post-Retirement Survivor allowance) for local miscellaneous members, local police members and for those local fire members entering membership on or prior to the effective date of this amendment to contract.
 - d. Section 21573 (Third Level of 1959 Survivor Benefits) for local miscellaneous members only.
 - e. Section 20903 (Two Years Additional Service Credit).
 - f. Section 20938 (Limit Prior Service to Members Employed on Contract Date) for local safety members only.

- g. Section 21536 (Local System Service Credit Included in Basic Death Benefit) for local safety members only.
- h. Section 21427 (Improved Nonindustrial Disability Allowance) for local fire members only.
- i. Section 21031 (Public Service Credit for Limited Prior Service) for local miscellaneous members only.
- j. Section 21024 (Military Service Credit as Public Service).
- k. Section 21027 (Military Service Credit for Retired Persons).
- l. Section 21023.5 (Public Service Credit for Peace Corps, AmeriCorps VISTA, or AmeriCorps Service).
- m. Section 20516 (Employees Sharing Cost of Additional Benefits):

Section 21354.4 (2.5% @ 55 Full formula) for local miscellaneous members entering membership on or prior to March 11, 2012. From and after February 27, 2011 the miscellaneous employees of Public Agency shall be assessed an additional 2.469% of their compensation for a total contribution rate of 10.469% pursuant to Government Code Section 20516.

Section 21362.2 (3% @ 50 Full formula) for local police members and for those local fire members entering membership on or prior to the effective date of this amendment to contract. From and after February 27, 2011 the police employees and fire employees entering membership on or prior to the effective date of this amendment to contract of Public Agency shall be assessed an additional 5% of their compensation for a total contribution rate of 14% pursuant to Government Code Section 20516.

- n. Section 20475 (Different Level of Benefits). Section 21353 (2% @ 60 Full formula) without Section 20516 (Employees Sharing Costs of Additional Benefits) are applicable to local miscellaneous members entering membership for the first time in the miscellaneous classification after March 11, 2012.

Section 20475 (Different Level of Benefits). Section 21362 (2% @ 50 Full formula) and Section 20037 (Three-Year Final Compensation) without Sections 21624 and 21626 (Post-Retirement Survivor Allowance) and without Section 20516 (Employees Sharing the Cost of Additional Benefits) applicable to local fire members entering membership for the first time in the fire classification after the effective date of this amendment to contract.

14. 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.
15. 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.
16. 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 and local safety 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.
17. 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.

18. 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 COSTA MESA

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

BY _____
PRESIDING OFFICER

Witness Date

Attest:

Clerk

ORDINANCE NO. 12-__

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF COSTA MESA AUTHORIZING AN AMENDMENT TO THE CONTRACT BETWEEN THE CITY OF COSTA MESA AND BOARD OF ADMINISTRATION OF THE CALIFORNIA PUBLIC EMPLOYEES' RETIREMENT SYSTEM.

WHEREAS, due to the ongoing economic difficulties, the City of Costa Mesa ("City") recently negotiated and approved revised agreements with its employees whereby all employee groups will contribute additional sums towards the employee portion of their retirement contribution; and

WHEREAS, as a result of these negotiations, on or about September 4, 2012, the City Council adopted amendments to the Costa Mesa Fire Association ("CMFA") Memorandum of Understanding ("MOU") and Costa Mesa Fire Management Association ("CMFMA") with the City by way of a Side Letter of Agreement ("LOA"); and

WHEREAS, the LOA revises retirement contributions for second tier employees; and

WHEREAS, the City has been working with the California Public Employment Retirement Systems ("CalPERS") in order to effectuate the changes to City's MOU with CMFA and CMFMA; and

WHEREAS, CalPERS has stringent timelines for amendment to CalPERS contracts including a limited window of time each year to amend contracts, processing of only one contract amendment at a time, and a special valuation from CalPERS that requires time for completion; and

WHEREAS, additionally, CalPERS procedures for contract amendments requires the effective date of the contract amendment as the first day of a payroll period and may not be earlier than the day after the effective date of the Ordinance; and

WHEREAS, on October 16, 2012, Resolution of Intention No. 12- was approved by the City Council, and a first reading of the Ordinance authorizing an amendment to the contract occurred; and

WHEREAS, a final reading of the Ordinance and a City Council vote on adoption will occur on November 20, 2012.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF COSTA MESA DOES HEREBY ORDAIN AS FOLLOWS:

Section 1. That an amendment to the contract between the City Council of the City of Costa Mesa and the Board of Administration, California Public Employees'

Retirement System is hereby authorized, a copy of said amendment being attached hereto, marked Exhibit "A," and by such reference made a part hereof as though herein set out in full.

Section 2. The Mayor of the City of Costa Mesa is hereby authorized, empowered, and directed to execute said amendment for and on behalf of said Agency.

Section 3. If any section, subsection, subdivision, sentence, clause, phrase, or portion of this Ordinance, is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance. The City Council hereby declares that it would have adopted this Ordinance, and each section, subsection, subdivision, sentence, clause, phrase, or portion thereof, irrespective of the fact that any one or more sections, subsections, subdivisions, sentences, clauses, phrases, or portions thereof be declared invalid or unconstitutional.

Section 4: The Mayor shall sign and the City Clerk shall certify to the passage and adoption of this Ordinance and shall cause the same to be published and posted pursuant to the provisions of law.

PASSED AND ADOPTED this ____ day of _____, 2012.

Eric Bever
Mayor of the City of Costa Mesa

ATTEST:

Brenda Green
Interim City Clerk of the City of Costa Mesa

APPROVED AS TO FORM:

Tom Duarte, City Attorney

STATE OF CALIFORNIA)
COUNTY OF ORANGE)ss
CITY OF COSTA MESA)

I, Brenda Green, Interim City Clerk and ex-officio clerk of the City Council of the City of Costa Mesa, hereby certify that the above and foregoing Ordinance No. 12- was introduced and considered section by section at a regular meeting of said City Council held on the 16th day October 2012, and was thereafter passed and adopted as a whole as an ordinance, by the following roll call vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the Seal of the City of Costa Mesa this _____ day of _____, 2012.

City Clerk and ex-officio Clerk of the
City Council of the City of Costa Mesa

CALIFORNIA PUBLIC EMPLOYEES' RETIREMENT SYSTEM

Actuarial and Employer Services Branch

Public Agency Contract Services

P.O. Box 942709

Sacramento, CA 94229-2709

(888) CalPERS (225-7377)

CERTIFICATION OF GOVERNING BODY'S ACTION

I hereby certify that the foregoing is a true and correct copy of a Resolution adopted by the

_____ of the
(governing body)

(public agency)

on _____
(date)

Clerk/Secretary

Title

CALIFORNIA PUBLIC EMPLOYEES' RETIREMENT SYSTEM

Actuarial and Employer Services Branch

Public Agency Contract Services

P.O. Box 942709

Sacramento, CA 94229-2709

(888) CalPERS (225-7377)

**CERTIFICATION OF COMPLIANCE WITH
GOVERNMENT CODE SECTION 7507**

I hereby certify that in accordance with Section 7507 of the Government Code the future annual costs as determined by the System Actuary for the increase/change in retirement benefit(s) have been made public at a public meeting of the

_____ of the
(governing body)

_____ of the
(public agency)

on _____ which is at least two weeks prior to the adoption of the
(date)

Resolution / Ordinance.

Adoption of the retirement benefit increase/change will not be placed on the consent calendar.

Clerk/Secretary

Title

Date _____

CALIFORNIA PUBLIC EMPLOYEES' RETIREMENT SYSTEM

Actuarial and Employer Services Branch

Public Agency Contract Services

P.O. Box 942709

Sacramento, CA 94229-2709

(888) CalPERS (225-7377)

**CERTIFICATION OF COMPLIANCE WITH
GOVERNMENT CODE SECTION 20475**

I hereby certify that the _____ of the
(governing body)

(public agency)

has fully discharged all of the obligation imposed by Chapter 10 (commencing with
Section 3500) of Division 4 of Title 1, Government Code.

By _____

Title

Witness

Date