


City Attorney

2014 OCT 16 PM 1:15

OAKLAND CITY COUNCIL

ORDINANCE No. _____ C.M.S.

ORDINANCE OF THE CITY OF OAKLAND TO APPROVE AN AMENDMENT TO THE CONTRACT BETWEEN THE CITY OF OAKLAND AND THE BOARD OF ADMINISTRATION OF THE CALIFORNIA PUBLIC EMPLOYEES' RETIREMENT SYSTEM (CALPERS) TO INCLUDE A 1% EMPLOYEES COST SHARING OF ADDITIONAL BENEFITS FOR TIER THREE CITY OF OAKLAND SWORN FIRE DEPARTMENT EMPLOYEES PURSUANT TO CALIFORNIA GOVERNMENT CODE SECTION 20516, AS APPROVED BY THE CITY COUNCIL IN THE JULY 1, 2014 MEMORANDUM OF UNDERSTANDING WITH THE INTERNATIONAL ASSOCIATION OF FIRE FIGHTERS (IAFF) LOCAL 55

WHEREAS, on September 12, 2012 the Governor of California signed pension reform AB 340, which included the California Public Employees' Pension Reform Act of 2013 (PEPRA) creating a new third tier (Tier 3) for all Sworn Safety Members hired after January 1, 2013; and

WHEREAS, on July 1, 2014, the City Council approved Memoranda of Understanding between the City of Oakland and the labor organizations representing safety employees, including the International Association of Firefighters (IAFF), Local 55, to implement changes to the retirement plans based on PEPRA; and

WHEREAS, based on the Memorandum of Understanding with IAFF, Local 55, sworn Fire Department personnel are subject to a 13% Employee Contribution towards their CalPERS Retirement benefits; and

WHEREAS, in accordance with the new PEPRA legislation new sworn fire employees hired after January 1, 2013 are able to pay a maximum employee contribution of 12% per California Government Code Section 20516.5; and

WHEREAS, additional cost sharing is permitted by California Government Code Section 20516; and

WHEREAS, the City of Oakland desires to subject new Tier 3 IAFF, Local 55 members to a 1% Employee Cost Sharing of Additional Benefits per California Government Code Section 20516.5 in accordance with the IAFF, Local 55 Memorandum of Understanding; and

WHEREAS, to implement the agreements pertaining to Tier 3 and 1% Employee Cost Sharing of Additional Benefits under California Government Code Section 20516 made between the City of Oakland and the labor organizations representing safety employees, including agreements

under the IAFF, Local 55 Memorandum of Understanding, the contract between the City of Oakland and the Board of Administration of the California Public Employees' Retirement System must be amended; and

WHEREAS, pursuant to California Government Code Section 20471, amendments to the contract between the City of Oakland and the Board of Administration of CalPERS must be approved by ordinance by a majority of the legislative body, which is 5 votes of the City Council; and

WHEREAS, pursuant to Section 500 of the Oakland City Charter, the City Administrator is the chief administrative officer of the City of Oakland, and pursuant to Section 504 of the Oakland City Charter, it is the administrative duty of the City Administrator to execute contracts authorized by the City Council on behalf of the City of Oakland;

NOW, THEREFORE, THE COUNCIL OF THE CITY OF OAKLAND DOES ORDAIN AS FOLLOWS:

Section 1. That an amendment to the contract between the City of Oakland and the Board of Administration of the California Public Employees' Retirement System as described above is hereby authorized, a copy of said amendment being attached hereto, marked Exhibit 1, and by such reference made a part hereof as though herein set out in full.

Section 2. The City Administrator, the official empowered by Section 504 of the Oakland City Charter to execute contracts authorized by the City Council on behalf of the City of Oakland, is hereby authorized, empowered and directed to execute said amendment for and on behalf of the City of Oakland.

Section 3. The effective date of this Ordinance shall be immediate if at least six Council Members vote in favor of the Ordinance, otherwise, it will take effect on the seventh day after final adoption.

IN COUNCIL, OAKLAND, CALIFORNIA, _____
PASSED BY THE FOLLOWING VOTE:

AYES- BROOKS, GALLO, GIBSON MCELHANEY, KALB, KAPLAN, REID, SCHAAF and PRESIDENT KERNIGHAN

NOES-

ABSENT-

ABSTENTION-

ATTEST: _____
LaTonda Simmons
City Clerk and Clerk of the Council
of the City of Oakland, California

DATE OF ATTESTATION: _____



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 Oakland

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 September 1, 1970, and witnessed June 5, 1972, and as amended effective April 9, 1973, October 4, 1975, January 10, 1976, July 1, 1976, July 4, 1981, July 30, 1983, December 6, 1985, January 1, 1988, June 30, 1992, September 25, 1993, July 1, 1996, June 14, 2000, July 7, 2001, October 13, 2001, June 21, 2003, June 19, 2004, July 2, 2005, June 3, 2009, January 23, 2010, February 8, 2012 and June 8, 2012 which provides for participation of Public Agency in said System, Board and Public Agency hereby agree as follows:

- A. Paragraphs 1 through 21 are hereby stricken from said contract as executed effective June 8, 2012, and hereby replaced by the following paragraphs numbered 1 through 21 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, age 50 for local safety members entering membership in the safety classification on or prior to February 8, 2012 and age 55 for local safety members entering membership for the first time in the safety classification after February 8, 2012.

2. Public Agency shall participate in the Public Employees' Retirement System from and after September 1, 1970 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) 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 hired for the first time as Fire Fighters on or after July 1, 1976 and those Fire Fighters prior to July 1, 1976 who waived their rights as of October 13, 2001;
 - b. Local Police Officers hired for the first time as Police Officers on or after July 1, 1976 and those Police Officers prior to July 1, 1976 who waived their rights as of June 21, 2003;

- 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. **MISCELLANEOUS EMPLOYEES, OTHER THAN ELECTIVE OFFICERS WHO ENTERED PUBLIC AGENCY SERVICE PRIOR TO SEPTEMBER 1, 1970 AND WHO HAVE NOT EXECUTED AND FILED, IN ACCORDANCE WITH RESOLUTIONS OF THE CITY COUNCIL A WAIVER OF RIGHTS UNDER THE OAKLAND MUNICIPAL EMPLOYEES' RETIREMENT SYSTEM PRIOR TO SEPTEMBER 1, 1970, OR IN THE PERIODS FEBRUARY 15, 1973 THROUGH MARCH 15, 1973, INCLUSIVE, OR NOVEMBER 24, 1975 THROUGH DECEMBER 19, 1975, INCLUSIVE, OR MAY 15, 1981 THROUGH JUNE 15, 1981, INCLUSIVE. THE EXCLUSION OF A MEMBER EXECUTING AND FILING SUCH WAIVER IN THE PERIOD MAY 15, 1981, THROUGH JUNE 15, 1981, INCLUSIVE, SHALL CEASE AND HIS MEMBERSHIP SHALL BE EFFECTIVE ON JULY 4, 1981 AND THOSE EMPLOYEES WHO DID NOT WAIVE THEIR RIGHTS AS OF JUNE 19, 2004;**
 - b. **THE PROVISION OF PARAGRAPH 5.a. SHALL ALSO APPLY TO INDIVIDUALS HIRED PRIOR TO SEPTEMBER 1, 1970 WHO TERMINATED EMPLOYMENT WITH THE PUBLIC AGENCY, LEFT CONTRIBUTIONS ON DEPOSIT WITH OAKLAND MUNICIPAL EMPLOYEES' RETIREMENT SYSTEM, AND ARE MEMBERS OF THE PUBLIC EMPLOYEES' RETIREMENT SYSTEM;**
 - c. **THE PROVISION OF PARAGRAPH 5.a. SHALL NOT APPLY TO EMPLOYEES OF PUBLIC AGENCY HIRED AFTER JULY 4, 1981, AS TO FUTURE SERVICE. SUCH EMPLOYEES MAY EXECUTE A WAIVER OF RIGHTS UNDER THE OAKLAND MUNICIPAL EMPLOYEES' RETIREMENT SYSTEM WITHIN 30 DAYS OF NOTICE BY LOCAL AGENCY OF RIGHT TO EXECUTE A WAIVER AND WILL RECEIVE SERVICE CREDIT IN THE PUBLIC EMPLOYEES' RETIREMENT SYSTEM FOR LOCAL SYSTEM SERVICE UPON PAYMENT OF CONTRIBUTIONS WITHDRAWN FROM THE LOCAL SYSTEM UNDER THE PROVISIONS OF GOVERNMENT CODE SECTION 20523 OR UPON TRANSFER OF MEMBER CONTRIBUTIONS FROM THE LOCAL SYSTEM UNDER THE PROVISIONS OF GOVERNMENT CODE SECTION 20530;**

- d. MEMBERS OF BOARDS AND COMMISSIONS APPOINTED BY THE MAYOR OR THE CITY COUNCIL;
 - e. EMPLOYEES AND MEMBERS OF THE BOARD OF EDUCATION;
 - f. PERSONS EMPLOYED ON PROVISIONAL APPOINTMENTS, PURSUANT TO CITY OF OAKLAND CHARTER SECTION 803, OTHER THAN CITY OF OAKLAND EMPLOYEES WHO ARE MEMBERS OF PERS AND ACCEPT SUCH APPOINTMENT AFTER SEPTEMBER 1, 1970, AND PERSONS EMPLOYED FOR SEASONAL EMPLOYMENT PURSUANT TO SECTION 802(d) OF THE CHARTER;
 - g. FIRE EMPLOYEES HIRED PRIOR TO JULY 1, 1976 WHO WILL REMAIN MEMBERS OF THE CITY OF OAKLAND FIRE AND POLICE RETIREMENT SYSTEM AND WHO DID NOT WAIVE THEIR RIGHTS UNDER THAT PLAN AS OF OCTOBER 13, 2001;
 - h. POLICE EMPLOYEES HIRED PRIOR TO JULY 1, 1976 WHO WILL REMAIN MEMBERS OF THE CITY OF OAKLAND FIRE AND POLICE RETIREMENT SYSTEM AND WHO DID NOT WAIVE THEIR RIGHTS UNDER THAT PLAN AS OF JUNE 21, 2003.
6. Permanent part-time employees hired prior to September 1, 1970 were excluded from membership in the Public Employees' Retirement System prior to July 4, 1981 because they were not eligible for membership in the Oakland Municipal Employees' Retirement System and could not execute a waiver of rights pursuant to paragraph 5.a. of this contract. This exclusion shall not apply to those employees in employment of public agency on or after July 4, 1981.
7. Assets heretofore accumulated with respect to miscellaneous members under the local retirement system who waived their rights under that system on April 9, 1973, January 10, 1976, July 4, 1981 and June 19, 2004, have been transferred to the Public Employees' Retirement System and applied against the liability for prior service incurred thereunder. That portion of assets so transferred which represent the accumulated contributions (plus interest thereof) required of the employees under said local system have been credited to the individual membership account of each such employee under the Public Employees' Retirement System.

8. Assets heretofore accumulated with respect to fire members under the local retirement system who waived their rights under that system on October 13, 2001, have been transferred to the Public Employees' Retirement System and applied against the liability for prior service incurred thereunder. That portion of assets so transferred which represent the accumulated contributions (plus interest thereof) required of the employees under said local system have been credited to the individual membership account of each such employee under the Public Employees' Retirement System.
9. Assets heretofore accumulated with respect to police members under the local retirement system who waived their rights under that system on June 21, 2003, have been transferred to the Public Employees' Retirement System and applied against the liability for prior service incurred thereunder. That portion of assets so transferred which represent the accumulated contributions (plus interest thereof) required of the employees under said local system have been credited to the individual membership account of each such employee under the Public Employees' Retirement System.
10. Public Agency and the Redevelopment Agency of the City of Oakland have agreed to a merger of their contracts, and this contract shall be a continuation of the benefits of the contract of the Redevelopment Agency of the City of Oakland, pursuant to Section 20567.6 of the Government Code. Such merger is effective as of December 28, 1975. Public Agency, by this contract, assumes the assets and liabilities accumulated under the former contract of the Redevelopment Agency of the City of Oakland. Legislation repealed said Section effective January 1, 1988.
 - a. The optional provisions of Section 21354 shall apply to all past service for former employees of the Redevelopment Agency of the City of Oakland.
11. The percentage of final compensation to be provided for each year of credited prior and current service as a local miscellaneous member in employment before and not on or after June 19, 2004 shall be determined in accordance with Section 21354 of said Retirement Law (2% at age 55 Full).

12. The percentage of final compensation to be provided for each year of credited prior and current service as a local miscellaneous member in employment on or after June 19, 2004 and not entering membership for the first time in the miscellaneous classification after June 8, 2012 shall be determined in accordance with Section 21354.5 of said Retirement Law (2.7% at age 55 Full).
13. 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 June 8, 2012 shall be determined in accordance with Section 21354.4 of said Retirement Law (2.5% at age 55 Full).
14. The percentage of final compensation to be provided for each year of credited prior and current service as a local safety member entering membership in the safety classification on or prior to February 8, 2012 shall be determined in accordance with Section 21362.2 of said Retirement Law (3% at age 50 Full).
15. The percentage of final compensation to be provided for each year of credited current service as a local safety member entering membership for the first time in the safety classification after February 8, 2012 shall be determined in accordance with Section 21363.1 of said Retirement Law (3% at age 55 Full).
16. Public Agency elected and elects to be subject to the following optional provisions:
 - a. Sections 21624, 21626 and 21628 (Post-Retirement Survivor Allowance).
 - b. Section 21536 (Local System Service Credit Included in Basic Death Benefit) for local miscellaneous members only.
 - c. Section 20042 (One-Year Final Compensation) for local safety members entering membership on or prior to February 8, 2012 and for those local miscellaneous members entering membership on or prior to June 8, 2012.
 - d. Section 21573 (Third Level of 1959 Survivor Benefits) for local fire members only.

- e. Section 21024 (Military Service Credit as Public Service).
- f. Section 20431 ("Local Police Officer" shall include city jail, detention or correctional facility employees as described in Government Code Section 20431).
- g. Section 20434 ("Local Fire Fighter" shall include any officer or employee of a fire department employed to perform firefighting, fire prevention, fire training, hazardous materials, emergency medical services, or fire or arson investigation services as described in Government Code Section 20434).
- h. Section 21023.5 (Public Service Credit for Peace Corps, AmeriCorps VISTA, or AmeriCorps Service).
- i. Section 20965 (Credit for Unused Sick Leave) for local fire members only.
- j. Section 20903 (Two Years Additional Service Credit).
- k. Section 21024.5 (Public Service Credit for Career Federal/State Firefighter Service).
- l. Section 20516 (Employees Sharing Cost of Additional Benefits):

Section 21362.2 (3% @ 50 Full formula) and Section 21363.1 (3% @ 55 Full formula) for classic local fire members.

From and after January 23, 2010 the classic fire employees of Public Agency shall be assessed an additional 4% of their compensation for a total contribution rate of 13% pursuant to Government Code Section 20516.

- m. Section 20475 (Different Level of Benefits). Section 21363.1 (3% @ 55 Full formula) and Section 20037 (Three-Year Final Compensation) are applicable to local safety members entering membership for the first time in the safety classification after February 8, 2012.

Section 21354.4 (2.5% @ 55 Full formula) and Section 20037 (Three-Year Final Compensation) are applicable to local miscellaneous members entering membership for the first time in the miscellaneous classification after June 8, 2012.

- n. Section 20516 (Employees Sharing Cost of Additional Benefits):
From and after the effective date of this amendment to contract, 1% for new local fire members.
- 17. Public Agency, in accordance with Government Code Section 20790, ceased to be an "employer" for purposes of Section 20834 effective on October 4, 1975. Accumulated contributions of Public Agency shall be fixed and determined as provided in Government Code Section 20834, and accumulated contributions thereafter shall be held by the Board as provided in Government Code Section 20834.
- 18. 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.
- 19. 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 fire 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.
- 20. 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.

21. 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 OAKLAND

BY _____
RENEE OSTRANDER, ACTING CHIEF
CUSTOMER ACCOUNT SERVICES DIVISION
PUBLIC EMPLOYEES' RETIREMENT SYSTEM

BY _____
PRESIDING OFFICER

Witness Date

Attest:

Clerk