



# Memorandum

**TO:** HONORABLE MAYOR  
AND CITY COUNCIL

**FROM:** Jennifer Schembri

**SUBJECT:** SEE BELOW

**DATE:** April 30, 2020

Approved

Date

5/1/2020

**SUBJECT: RESOLUTION OF INTENTION TO APPROVE AN AMENDMENT TO THE CONTRACT BETWEEN THE CALIFORNIA PUBLIC EMPLOYEES' RETIREMENT SYSTEM AND THE CITY OF SAN JOSE.**

## **REASON FOR ADDENDUM**

As there are several other steps to amend the contract with CalPERS, which have an impact on the retirement benefits that the Office of Retirement Services investment professional and executive staff receive, the City Administration is requesting that this item be placed on the May 5, 2020 City Council agenda.

On April 14, 2020, the City Council adopted a Resolution of Intention to Approve an Amendment to the Contract between CalPERS and the City of San Jose. This item was placed on the Consent Calendar for the City Council Agenda on April 14, 2020 because of the priority given to items under the Strategic Support section related to the response to COVID-19 and the Resolution of Intention did not result in the adoption of any retirement benefits. After the Council's actions, the City Administration was informed by CalPERS that the Resolution of Intention cannot be placed on the Consent Calendar.

CalPERS informed the City that pursuant to California Government Code Section 7507, the adoption of any retirement benefit increase or change shall not be placed on a consent calendar. While the Resolution of Intention does not adopt any retirement benefit, CalPERS takes the position that the Resolution of Intention cannot be placed on the Consent Calendar in order for it to comply with Section 7507.

Although the City maintains a different interpretation of Section 7507, we want to ensure compliance with CalPERS' processes. As such, this item will need to be re-heard on a City Council agenda. The City Administration requests that the Council adopt the Resolution of Intention.

## **RECOMMENDATION**

Adopt a resolution of intention to approve an amendment to the Contract between the California Public Employees' Retirement System and the City of San José.

## **OUTCOME**

Adoption of the resolution of intention to amend the contract between the California Public Employees' Retirement System (CalPERS) and the City of San Jose will allow the City to begin the process to allow for certain classifications in the Office of Retirement Services to enroll in CalPERS retirement benefits.

## **BACKGROUND**

On November 4, 2014, Measure G was passed by the voters of San José. Measure G granted the City's two retirement boards with certain authorities, including the authority to appoint the Chief Executive Officer (Director) of Retirement Services. In addition, Measure G excluded the Chief Executive Officer, the Chief Investment Officer, and investment professional staff in the Office of Retirement Services (ORS) from being members of the City's defined benefit pension or retiree healthcare plans under City Charter Section 1101 (a) (12). This exclusion, however, did not apply to any incumbents filling those positions as of November 4, 2014.

Accordingly, investment staff hired after the implementation of Measure G have been mandatorily placed into the City's Tier 3 Plan. The Tier 3 Plan is a 401(a) defined contribution retirement savings plan in lieu of the City's defined benefit plan. With respect to compensation, the retirement boards can make recommendations to the City Council for the total compensation for the Chief Executive Officer, the Chief Investment Officer, and investment professional staff in the Office of Retirement Services, but compensation for these positions is set by the City Council pursuant to City Charter Section 902.

During the August 8, 2018 Rules and Open Government Committee meeting, City staff was directed to bring to the City Council an amendment to the CalPERS contract to include future professional investment staff in the CalPERS defined benefit pension plan. This amendment would have resulted in the creation of an option for future professional investment staff in the Department to choose between the City's Tier 3 Plan or CalPERS retirement benefit.

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Based on discussions with tax counsel, the City was presented with three options for removing current eligible ORS staff from the Tier 3 Plan:

- i. Mandatory participation in CalPERS;
- ii. City pays difference in CalPERS employee contribution rate that is more than 3.75%; or
- iii. Employees make post-tax employee contributions to CalPERS.

The [Rules and Open Government Committee Memo dated March 1, 2019](#) addressed those three options for the City Council regarding the CalPERS and Tier 3 benefits for ORS staff. The Rules Committee approved placing this memo on the March 19, 2019 Council agenda.

On March 19, 2019, City Council approved mandating incumbent and future eligible ORS staff to move into the CalPERS benefit. These employees would be required to join CalPERS and would no longer participate in the Tier 3 Plan. This would mean that all impacted employees would have to be moved into CalPERS. Additionally, the City Council approved moving these employees into CalPERS on a prospective basis.

## **ANALYSIS**

The next step in the process of implementing the CalPERS pension benefit for ORS staff is for the Council to adopt the Resolution of Intention to amend the City's contract with CalPERS. The Resolution is intended to give notice of the City's intention to approve changes to its contract with CalPERS to allow for the certain eligible ORS staff to enroll in the CalPERS retirement benefits prospectively. These changes will apply to employees hired into the following classification on or after November 4, 2014:

- Director, Retirement Services and Chief Executive Officer
- Assistant Director & Chief Investment Officer
- Retirement Investment Analyst I
- Retirement Investment Analyst II
- Retirement Investment Officer
- Retirement Investment Officer, Senior

The Resolution of Intention to Approve an Amendment to the Contract and corresponding Contract Amendment are attached to this memo. The proposed Amendment from CalPERS would replace the City's entire November 29, 1998 Contract with CalPERS. The City's current Contract with CalPERS does not have any indemnification provision whereby the City is required to indemnify CalPERS. The proposed Amendment, however, contains an indemnification provision whereby the City would be required to indemnify CalPERS, as set forth in Section 3 of the attached Amendment. Under the proposed indemnification provision, the City would be required to indemnify CalPERS for any claims, including but not limited to attorneys' fees, relating to the following:

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- (a) The City's election to provide retirement benefits under the CalPERS Contract that are different than the retirement benefits provided under the City's prior non-CalPERS retirement program;
- (b) Any claim between the City and its employees which relates to the City's election to amend its CalPERS Contract to provide retirement benefits that are different than such employees' existing retirement benefits; and
- (c) The City's agreement with a third party other than CalPERS to provide retirement benefits that are different than the retirement benefits provided under its CalPERS Contract and provided for under the California Public Employees' Retirement Law.

If the City Council adopts the Resolution of Intention to Approve an Amendment to the Contract, staff will return to the Council with an ordinance to amend the Contract, as required by CalPERS, and an ordinance to amend the City's Tier 3 Plan to remove the Retirement Services positions at issue from the Tier 3 Plan. The ordinance required by CalPERS must have a first and second reading, as well as be published in a newspaper of general circulation. Further, pursuant to California Government Code Section 7507, the future annual costs of changes in retirement benefits as determined by CalPERS shall be made public at a public meeting at least two weeks prior to the adoption of the final ordinance, as required by CalPERS.

## **CONCLUSION**

The City Council's approval of the Resolution of Intention will allow for the City to follow the process set forward by CalPERS to amend the parties' contract. The contract amendment will result in the above listed classifications enrollment into CalPERS for retirement benefits.

## **EVALUATION AND FOLLOW-UP**

If the Council adopts the proposed Resolution of Intention to Approve an Amendment to the Contract with CalPERS, staff will bring back an ordinance to amend the Contract and an ordinance to amend the Tier 3 Plan in the Municipal Code for the City Council's review and approval.

## **CLIMATE SMART SAN JOSE**

The recommendation in this memo has no effect on Climate Smart San José energy, water, or mobility goals.

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### **PUBLIC OUTREACH**

This memorandum will be posted on the City's website in advance of the May 5, 2020 City Council Agenda.

### **COORDINATION**

This memorandum was coordinated with the City Attorney's Office.

### **COMMISSION RECOMMENDATION/INPUT**

There are no applicable commissions for this memo.

### **CEQA**

Not a Project, File No. PP17 003, Agreements/Contracts (New or Amended) resulting in no physical changes to the environment.



JENNIFER SCHEMBRI

Director of City Manager's Office of Employee Relations  
Director of Human Resources

For questions please contact Cheryl Parkman, Assistant to the City Manager, at (408) 535-8152.

Attachment A – Resolution of Intention

Attachment B – Contract Amendment

**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 SAN JOSE**

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 add an exception to the exclusions to include employees hired on or after November 4, 2014, into the following positions:

- Director, Retirement Services & Chief Executive Officer (Unclassified)
- Assistant Director & Chief Investment Officer (Unclassified)
- Retirement Investment Analyst I
- Retirement Investment Analyst II
- Retirement Investment Officer
- Retirement Investment Officer, Senior (Unclassified)

After the effective date of this amendment of 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

\_\_\_\_\_  
Date adopted and approved

\_\_\_\_\_  
Title



## **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 San Jose

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 November 29, 1998, and witnessed November 6, 1998, which provides for participation of Public Agency in said System, Board and Public Agency hereby agree as follows:

- A. Paragraphs 1 through 10 are hereby stricken from said contract as executed effective November 29, 1998, and hereby replaced by the following paragraphs numbered 1 through 12 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 and age 62 for new local miscellaneous members.
  2. Public Agency shall participate in the Public Employees' Retirement System from and after November 29, 1998 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. 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. **CITY EMPLOYEES WHO ARE ELIGIBLE FOR COVERAGE IN EITHER THE POLICE & FIRE RETIREMENT PLAN, THE FEDERATED RETIREMENT PLAN, OR THE CITY'S PTC 457 PLAN, EXCEPT PERSONS ELECTED TO THE CITY COUNCIL AND WHO ARE IN OFFICE ON OR AFTER NOVEMBER 29, 1998; AND**



**b. EXCEPT PERSONS HIRED ON OR AFTER NOVEMBER 4, 2014, EMPLOYED IN THE FOLLOWING POSITIONS:**

- **DIRECTOR, RETIREMENT SERVICES & CHIEF EXECUTIVE OFFICER (UNCLASSIFIED)**
- **ASSISTANT DIRECTOR & CHIEF INVESTMENT OFFICER (UNCLASSIFIED)**
- **RETIREMENT INVESTMENT ANALYST I**
- **RETIREMENT INVESTMENT ANALYST II**
- **RETIREMENT INVESTMENT OFFICER**
- **RETIREMENT INVESTMENT OFFICER, SENIOR (UNCLASSIFIED)**

**AFTER THE EFFECTIVE DATE OF THIS AMENDMENT TO CONTRACT.**

6. The percentage of final compensation to be provided for classic local miscellaneous members 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).
7. 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).
8. Public Agency elected and elects to be subject to the following optional provisions:
  - a. Section 20938 (Limit Prior Service to Members Employed on Contract Date).
  - b. Section 21031 (Public Service Credit for Limited Prior Service).
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 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. 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.

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

BOARD OF ADMINISTRATION  
PUBLIC EMPLOYEES' RETIREMENT SYSTEM

CITY COUNCIL  
CITY OF SAN JOSE

BY \_\_\_\_\_  
ARNITA PAIGE, CHIEF  
PENSION CONTRACTS AND PREFUNDING  
PROGRAMS DIVISION  
PUBLIC EMPLOYEES' RETIREMENT SYSTEM

BY \_\_\_\_\_  
PRESIDING OFFICER

\_\_\_\_\_  
Witness Date

Attest:

\_\_\_\_\_  
Clerk