

REGULAR

NUMBER: 101.21

TITLE: AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MILPITAS AUTHORIZING AN AMENDMENT TO THE CONTRACT BETWEEN THE CITY COUNCIL OF THE CITY OF MILPITAS AND THE BOARD OF ADMINISTRATION OF THE CALIFORNIA PUBLIC EMPLOYEES' RETIREMENT SYSTEM

HISTORY: This Ordinance was introduced (first reading) by the City Council at its meeting of August 2, 2011, upon motion by Vice Mayor McHugh and was adopted (second reading) by the City Council at its meeting of _____, upon motion by _____. The Ordinance was duly passed and ordered published in accordance with law by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:

APPROVED:

Mary Lavelle, City Clerk

Jose S. Esteves, Mayor

APPROVED AS TO FORM:

Michael J. Ogaz, City Attorney

THE CITY COUNCIL OF THE CITY OF MILPITAS DOES ORDAIN AS FOLLOWS:

SECTION 1.

An amendment to the contract between the City Council of the City of Milpitas and the Board of Administration, California Public Employee's Retirement System is hereby authorized, a copy of said amendment being attached hereto, marked Exhibit, and by such reference made a part hereof as though herein set out in full.

SECTION 2.

The Mayor of the City Council of the City of Milpitas is hereby authorized, empowered, and directed to execute said amendment for and on behalf of the City Council of the City of Milpitas.

SECTION 3.

In accordance with Section 36937 of the Government Code of the State of California, this Ordinance shall take effect thirty (30) days from and after the date of its passage. The City Clerk of the City of Milpitas shall cause this Ordinance or a summary thereof to be published in accordance with Section 36933 of the Government Code of the State of California.



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 Milpitas



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 July 1, 1962, and witnessed June 15, 1962, and as amended effective March 1, 1963, April 1, 1973, September 28, 1973, January 1, 1974, July 1, 1976, July 1, 1980, May 13, 1984, May 21, 1989, April 22, 1990, July 6, 1990, October 4, 1992, September 17, 1993, December 6, 1996, May 8, 1998, July 18, 1999, July 16, 2000, June 2, 2002, October 6, 2002, October 15, 2006 and June 24, 2007 which provides for participation of Public Agency in said System, Board and Public Agency hereby agree as follows:

- A. Paragraphs 1 through 14 are hereby stricken from said contract as executed effective June 24, 2007, and hereby replaced by the following paragraphs numbered 1 through 16 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 the effective date of this amendment to contract; age 60 for local miscellaneous members entering membership for the first time in the miscellaneous classification after the effective date of this amendment to contract and age 50 for local safety members.

2. Public Agency shall participate in the Public Employees' Retirement System from and after July 1, 1962 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. Public Agency and the Milpitas Fire Protection District have agreed to a merger of their contracts, and this contract shall be a continuation of the benefits of the contract of the Milpitas Fire Protection District, pursuant to Section 20567.5 of the Government Code. Such merger is effective as of July 1, 1962. Legislation repealed said Section effective January 1, 1988.
7. The percentage of final compensation to be provided for each year of credited prior and current service for local miscellaneous members in employment before and not on or after June 2, 2002 shall be determined in accordance with Section 21354 of said Retirement Law, subject to the reduction provided therein for service prior to December 31, 1972, termination of Social Security, for members whose service has been included in Federal Social Security (2% at age 55 Full and Modified).
8. The percentage of final compensation to be provided for each year of credited prior and current service for local miscellaneous members in employment on or after June 2, 2002 and not entering membership for the first time in the miscellaneous classification after the effective date of this amendment to contract shall be determined in accordance with Section 21354.5 of said Retirement Law, subject to the reduction provided therein for service prior to December 31, 1972, termination of Social Security, for members whose service has been included in Federal Social Security (2.7% at age 55 Full and Modified).
9. The percentage of the 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 the effective date of this amendment to contract shall be determined in accordance with Section 21353 of said Retirement Law (2% at age 60 Full).

10. The percentage of final compensation to be provided for each year of credited prior and current service as a local safety member shall be determined in accordance with Section 21362.2 of said Retirement Law (3% at age 50 Full).
11. Public Agency elected and elects to be subject to the following optional provisions:
 - a. Section 21573 (Third Level of 1959 Survivor Benefits) for local miscellaneous members and local fire members only.
 - b. Section 20425 ("Local Police Officer" shall include employees of a police department who were employed to perform identification or communication duties on August 4, 1972 and who elected to be local safety members).
 - c. Section 20042 (One Year Final Compensation) for local safety members, and those local miscellaneous members entering membership on or prior to the effective date of this amendment to contract.
 - d. Section 20965 (Credit for Unused Sick Leave).
 - e. Section 21024 (Military Service Credit as Public Service).
 - f. 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).
 - g. Section 20903 (Two Years Additional Service Credit).
 - h. Section 21427 (Improved Nonindustrial Disability Allowance) for local police members only.
 - i. Section 21548 (Pre-Retirement Option 2W Death Benefit) for local police members only.
 - j. Section 21574 (Fourth Level of 1959 Survivor Benefits) for local police members only.
 - k. Section 21547.7 (Alternate Death Benefit for Local Fire Members Credited with 20 or More Years of Service).
 - l. Section 20475 (Different Level of Benefits). Section 21353 (2% @ 60 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 the effective date of this amendment to contract.

12. Public Agency, in accordance with Government Code Section 20790, ceased to be an "employer" for purposes of Section 20834 effective on July 1, 1976. 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.
13. 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.
14. 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 fire members.
 - b. Contributions required per covered member on account of the 1959 Survivor Benefits provided under Section 21574 of said Retirement Law. (Subject to annual change.) In addition, all assets and liabilities of Public Agency and its employees shall be pooled in a single account, based on term insurance rates, for survivors of all local police members.
 - c. 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.
 - d. 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.
15. 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.

16. 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 MILPITAS

BY _____
DARRYL WATSON, CHIEF
CUSTOMER ACCOUNT SERVICES DIVISION
PUBLIC EMPLOYEES' RETIREMENT SYSTEM

BY _____
PRESIDING OFFICER

Witness Date

Attest:

Clerk