

STAFF REPORT FOR CALENDAR ITEM NO. : 8
FOR THE MEETING OF: November 10, 2011

TRANSBAY JOINT POWERS AUTHORITY

BRIEF DESCRIPTION:

Approve the attached Resolution of Intention to initiate the process of directly contracting with the California Public Employees' Retirement System (CalPERS) to continue providing retirement benefits to employees of TJPA, and a Resolution Authorizing the Employer "Pick-up" of Employee Contributions.

EXPLANATION:

In December 2003 the TJPA entered into an agreement with Local Government Services (LGS) to provide human resources services to the TJPA for a negotiated administrative fee. These services have included providing and administering employee benefits, and processing payroll for the TJPA. The original contract expired in July 2007 and a second contract was entered into with LGS at that time.

TJPA now plans to become its own employer of record, transitioning human resources management to TJPA. This transition is planned to take effect on January 1, 2012. As employees of LGS, TJPA staff are currently members of the CalPERS retirement system and are also able to enroll in CalPERS medical benefit programs. TJPA wishes to continue contracting with CalPERS for these benefits. Because TJPA staff are currently eligible for CalPERS retirement and medical benefits, no increase in benefit costs is anticipated due to the transition.

The attached resolutions are the initial step in the CalPERS contracting process. A Final Resolution for retirement, and appropriate resolutions for medical benefits, will be brought to the Board for consideration at the December Board meeting.

Employer Retirement Contribution

The Resolution of Intention and its attached Contract Exhibit includes retirement benefits identical to those currently provided by LGS: a Retirement Formula of 2% @55, One-Year Final Compensation, and Fourth Level of 1959 Survivor Benefits. The attached "Pick-Up" Resolution would also continue the LGS policy of designating the employee's required 7% contribution as "picked-up" for tax purposes.

CalPERS has performed an actuarial study to determine the TJPA's initial required employer contribution rate. The study was based upon transferring the current LGS employees to a new TJPA contract with identical benefits at the 2% @55 formula, limiting prior service credit to members employed on the conversion date, and one year final compensation calculation. Per the study, the required employer contribution rate for fiscal year 2012-13 is 10.3%. This employer contribution rate is the same for TJPA as it has been for LGS, according to the study, thus there is no anticipated fiscal impact on the TJPA budget. The future annual cost of the new contract is estimated in the actuarial study to be \$166,450 for FY2012-13. CalPERS will conduct new valuations annually to determine the agency's employer contribution rate for each fiscal year.

Employee Retirement Contribution

The Internal Revenue Code Section 414(h)(2) allows public agencies to designate required employee contributions as being “picked-up” by the employer and treated as employer contributions for tax purposes. In essence, tax on the contributions will be deferred until the employee receives retirement benefits from the plan. The Internal Revenue Service Revenue Ruling 2006-43 requires the employer to specify in writing that the contributions, although designated as employee contributions, are being paid by the employer.

Once the Resolution of Intention is adopted, staff will hold an election which will allow employees to vote, by secret ballot, their approval or disapproval of the retirement proposal. Current employees will also be required to make an individual election as to whether or not to participate in the Fourth Level 1959 Survivor Benefit. 1959 Survivor Benefits provide a monthly allowance, in amounts specified by law, to certain survivors of members who were covered for the benefit.

Following the election, a Final Resolution will be brought to the Board for approval at the December meeting, with an expected contract effective date of January 1, 2012.

The attached resolutions have been provided by CalPERS and cannot be changed.

ENCLOSURES:

1. Resolution of Intention to Approve a Contract Between CalPERS and the TJPA (for retirement benefits)
2. CalPERS Contract (Exhibit Only)
3. Summary of Major CalPERS Retirement Provisions
4. Resolution Authorizing the Employer “Pick-up” of Employee Contributions

**RESOLUTION OF INTENTION
TO APPROVE A CONTRACT
BETWEEN THE
BOARD OF ADMINISTRATION
CALIFORNIA PUBLIC EMPLOYEES' RETIREMENT SYSTEM
AND THE
BOARD OF DIRECTORS
TRANSBAY JOINT POWERS AUTHORITY**

WHEREAS, the Public Employees' Retirement Law permits the participation of public agencies in the Public Employees' Retirement System, making their employees members of said System, and sets forth the procedure by which participation may be accomplished; and

WHEREAS, one of the steps required in the procedure is the adoption by the governing body of the public agency of a resolution giving notice of intention to approve a contract for such participation of said agency in the Public Employees' Retirement System, which resolution shall contain a summary of the major provisions of the proposed retirement plan; and

WHEREAS, attached is a summary of the major provisions of the proposed plan;

NOW, THEREFORE, BE IT RESOLVED, that the governing body of the above agency gives, and it does hereby give notice of intention to approve a contract between said governing body and the Board of Administration of the Public Employees' Retirement System, providing for participation of said agency in said retirement system, a copy of said contract and a copy of the summary of the major provisions of the proposed plan 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



CONTRACT

**Between the
Board of Administration
California Public Employees' Retirement System
and the
Board of Directors
Transbay Joint Powers 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.

PLEASE DO NOT SIGN EXHIBIT ONLY

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.

PLEASE DO NOT SIGN "EXHIBIT ONLY"

- (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 transit function of Local Government Services Authority, A Joint Powers Authority, 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 January 1, 2012.
- a. All benefits provided under this contract shall apply to all past service for former employees of the transit function of the Former Agency.

PLEASE DO NOT SIGN "EXHIBIT ONLY"

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 of said Retirement Law (2% at age 55 Full).
8. Public Agency elects to be subject to the following optional provisions:
 - a. Section 20042 (One-Year Final Compensation).
 - b. Section 20938 (Limit Prior Service to Members Employed on Contract Date).
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 DIRECTORS
TRANSBAY JOINT POWERS
AUTHORITY

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

BY _____
PRESIDING OFFICER

Witness Date

Attest:

Clerk

CALIFORNIA PUBLIC EMPLOYEES' RETIREMENT SYSTEM

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

SUMMARY OF MAJOR PROVISIONS

2% @ 55 Formula (Section 21354)
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% 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 1.426% at age 50. If retirement is deferred beyond age 55, the percentage of final compensation increases for each quarter year of attained age to 2.418% at age 63.

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 determine 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 to 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% @ 55 formula contribute 7% 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.

**RESOLUTION TO TAX DEFER MEMBER PAID CONTRIBUTIONS –
IRC 414(h)(2)
EMPLOYER PICK-UP**

WHEREAS, The governing body of the Transbay Joint Powers Authority has the authority to implement the provisions of section 414(h)(2) of the Internal Revenue Code (IRC); and

WHEREAS, The Transbay Joint Powers Authority has determined that even though the implementation of the provisions of section 414(h)(2) IRC is not required by law, the tax benefit offered by section 414(h)(2) IRC should be provided to All Employees who are members of the California Public Employees' Retirement System;

Now, therefore, be it RESOLVED:

- (1) That the Transbay Joint Powers Authority will implement the provisions of section 414(h)(2) Internal Revenue Code by making employee contributions pursuant to California Government Code Section 20691 to the California Public Employees' Retirement System on behalf of all its employees or all its employees in a recognized group or class of employment who are members of the California Public Employees' Retirement System. "Employee contributions" shall mean those contributions to the Public Employees' Retirement System which are deducted from the salary of the employees and are credited to individual employee's accounts pursuant to California Government Code section 20691.
- (2) That the contributions made by the Transbay Joint Powers Authority to the California Public Employees' Retirement System, although designated as employee contributions, are being paid by the Transbay Joint Powers Authority in lieu of contributions by the employees who are members of the California Public Employees' Retirement System.
- (3) That employees shall not have the option of choosing to receive the contributed amounts directly instead of having them paid by the Transbay Joint Powers Authority to the California Public Employees' Retirement System.
- (4) That the Transbay Joint Powers Authority shall pay to the California Public Employees' Retirement System the contributions designated as employee contributions from the same source of funds as used in paying salary.
- (5) That the amount of contributions designated as employee contributions and paid by the Transbay Joint Powers Authority to the California Public Employees' Retirement System on behalf of an employee shall be the entire contribution required of the employee by the California Public Employees Retirement Law (California Government Code Sections 20000, et seq.).
- (6) That the contributions designated as employee contributions made by the Transbay Joint Powers Authority to the California Public Employees' Retirement System shall be treated for all purposes, other than taxation, in the same way that member contributions are treated by the California Public Employees' Retirement System.

Passed and Adopted by the governing body of the Transbay Joint Powers Authority at the regular meeting of the Board held on Thursday, November 10, 2011 in San Francisco, California.

By: _____
Secretary, Transbay Joint Powers Authority