



## EXECUTIVE DECISION DOCUMENT

GENERAL MANAGER APPROVAL: <i>Robert M. Poon</i> 3 Oct 2019		GENERAL MANAGER ACTION REQ'D:		
DATE: 9/27/2019		BOARD INITIATED ITEM: No		
Originator/Prepared by: Diane Iwata Dept: Human Resources Administration <i>Diane Iwata</i> Signature/Date: 10/1/2019	General Counsel <i>[Signature]</i> 10/2/19 [ ]	Controller/Treasurer <i>[Signature]</i> 10/2/19 [ ]	District Secretary [ ]	BARC <i>[Signature]</i> 10/5/19 [ ]

### Resolution of Intention to Amend CalPERS Contract to Include Cost Sharing of Employer Contribution for BPOA and BPMA

#### PURPOSE:

To adopt a resolution of intention to approve an amendment to the contract between the District and the California Public Employees Retirement System ("CalPERS") to be subject to California Government Code, Section 20516 (cost sharing of employer contribution) for the BART Police Officers' Association ("BPOA") and BART Police Managers' Association ("BPMA"). Attached is a sample amendment to the PERS contract.

#### DISCUSSION:

In their 2018-2022 collective bargaining agreements, the District and BPOA and BPMA agreed to elect to be subject to California Government Code Section 20516 (cost sharing of employer contribution). By amending the District's contract with CalPERS, the increased pension contributions will be credited to the employees' accounts as normal contributions and will be included in the refund of accumulated contributions to the employees who separate from CalPERS-covered employment and elect to withdraw their contributions. The following are the current additional pension contributions:

Group	Additional Pension Contribution % Paid by the Employee
BPOA – Miscellaneous - Classic	4%
BPOA – Miscellaneous - PEPRA	4%
BPOA – Safety - Classic	8%
BPOA – Safety - PEPRA	2%



Group	Additional Pension Contribution % Paid by the Employee
BPMA – Miscellaneous - Classic	6%
BPMA– Miscellaneous – PEPRA*	0%
BPMA– Safety - Classic	8%
BPMA– Safety - PEPRA	2%

\*Included for informational purposes only. This group will not be included in the contract amendment.

For the initial contract amendment, CalPERS also requires a secret ballot vote by the affected employees. The contract shall not be amended if a majority of the affected employees vote to disapprove the proposed plan. In this case, the additional pension contributions would still be deducted but not credited to the employee's CalPERS account.

California Government Code 7507 requires that adoption of a retirement benefit change occur no less than two weeks after the actuarial impact upon future annual costs is made public at a public meeting. For BPOA, at the November 15, 2018, Board Meeting and for BPMA, at the May 23, 2019, Board meeting, the actuarial impact upon future annual costs of the change to pension contributions were publicly disclosed in compliance with this requirement.

#### **FISCAL IMPACT:**

There is no fiscal impact to adopt this resolution.

#### **ALTERNATIVES:**

This is a negotiated benefit for represented employees which the Board approved when it ratified the 2018-2022 collective bargaining agreements with BPOA and BPMA.

#### **RECOMMENDATION:**

That the Board adopts the following motion.

#### **MOTION:**

To adopt the attached resolution of intention to approve an amendment to the contract between the Board of Administration of CalPERS and the Board of Directors of the District to elect Section 20516 (cost sharing of employer contributions) for BPOA and BPMA, and authorize the Board President to sign the resolution on behalf of the Board.



California Public Employees' Retirement System  
Financial Office | Pension Contracts and Prefunding Programs Division  
P.O. Box 942703, Sacramento, CA 94229-2703  
888 CalPERS (or 888-225-7377) | TTY: (877) 249-7442 | [www.calpers.ca.gov](http://www.calpers.ca.gov)

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## **Certification of Compliance with Government Code Section 7507**

I hereby certify that in accordance with Government Code section 7507, the future annual costs as determined by the California Public Employees' Retirement System for the increase or change in retirement benefit(s) have been made public at a public meeting of the \_\_\_\_\_ of the \_\_\_\_\_

(governing body)

(public agency)

on \_\_\_\_\_ which is at least two weeks prior to the adoption of the Resolution /  
(date)

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

\_\_\_\_\_  
Clerk/Secretary

\_\_\_\_\_  
Title

Date \_\_\_\_\_



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## **Certification of Compliance with Government Code Section 20516**

I hereby certify that in accordance with Government Code section 20516 San Francisco Bay Area Rapid Transit District and its local miscellaneous employees and its local safety employees have agreed in writing to the following:

Section 20516 (Employees Sharing Additional Cost) of 6% for classic local miscellaneous members, 8% for classic local safety members and 2% for new local safety members in the Bart Police Managers' Association; and

4% for local miscellaneous members, 8% for classic local safety members and 2% for new local safety members in the Bart Police Officers' Association.

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Signature

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Title

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Witness

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Date





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## Certification of Employee Election

I hereby certify that the following employees of the San Francisco Bay Area Rapid Transit District have expressed their approval or disapproval of said agency's intention to amend its contract to provide Section 20516 (Employees Sharing Additional Cost) of 6% for classic local miscellaneous members, 8% for classic local safety members and 2% for new local safety members in the Bart Police Managers' Association; and 4% for local miscellaneous members, 8% for classic local safety members and 2% for new local safety members in the Bart Police Officers' Association. on the basis described in the Resolution of Intention adopted by said agency's governing body on \_\_\_\_\_, \_\_\_\_\_, in such manner as to permit each employee to separately and secretly express his choice and that the outcome of such election was as follows:

	Number of employees eligible to vote	Number of votes approving said participation	Number of votes disapproving said participation
Local Miscellaneous Members as defined in section 20383	_____	_____	_____
Local Police Officers as defined in section 20425	_____	_____	_____

\_\_\_\_\_  
Clerk or Secretary

\_\_\_\_\_  
Date



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## 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

**RESOLUTION OF INTENTION  
TO APPROVE AN AMENDMENT TO CONTRACT  
BETWEEN THE  
BOARD OF ADMINISTRATION  
CALIFORNIA PUBLIC EMPLOYEES' RETIREMENT SYSTEM  
AND THE  
BOARD OF DIRECTORS  
SAN FRANCISCO BAY AREA RAPID TRANSIT DISTRICT**

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 20516 (Employees Sharing Additional Cost) of 6% for classic local miscellaneous members, 8% for classic local safety members and 2% for new local safety members in the Bart Police Managers' Association; and

4% for local miscellaneous members, 8% for classic local safety members and 2% for new local safety members in the Bart Police Officers' Association.

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  
Board of Directors  
San Francisco Bay Area Rapid Transit District

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 December 1, 1958, and witnessed November 14, 1958, and as amended effective January 1, 1961, August 26, 1969, January 31, 1972, July 1, 1976, October 1, 1976, July 1, 1978, January 1, 1981, December 11, 1989, August 31, 1992, January 13, 1995, April 26, 1996, July 16, 1998, September 13, 2002, November 22, 2002, July 1, 2004, October 19, 2009, January 15, 2010 and September 23, 2016 which provides for participation of Public Agency in said System, Board and Public Agency hereby agree as follows:

- A. Paragraphs 1 through 15 are hereby stricken from said contract as executed effective September 23, 2016, and hereby replaced by the following paragraphs numbered 1 through 15 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, age 62 for new local miscellaneous members, age 50 for classic local safety members and age 57 for new local safety members.
  2. Public Agency shall participate in the Public Employees' Retirement System from and after December 1, 1958 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 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. Local Police Officers (herein referred to as local safety members);
  - b. 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. **FIRE FIGHTERS.**
6. The percentage of final compensation to be provided for each year of credited prior and current service for classic local miscellaneous members shall be determined in accordance with Section 21354 of said Retirement Law, subject to the reduction provided therein for service on and after January 1, 1960, the effective date of Social Security coverage, and prior to December 31, 1980, termination of Social Security, for members whose service has been included in Federal Social Security (2% at age 55 Full and Modified).

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. The percentage of final compensation to be provided for each year of credited prior and current service as a classic local safety member shall be determined in accordance with Section 21362.2 of said Retirement Law (3% at age 50 Full).
9. The percentage of final compensation to be provided for each year of credited prior and current service as a new local safety member shall be determined in accordance with Section 7522.25(d) of said Retirement Law (2% at age 57 Full).
10. Public Agency elected and elects to be subject to the following optional provisions:
  - a. Section 20042 (One-Year Final Compensation) for classic members only.
  - b. Section 21024 (Military Service Credit as Public Service).
  - c. Section 21027 (Military Service Credit for Retired Persons).
  - d. Section 20692 (Employer Paid Member Contributions Converted to Payrate During the Final Compensation Period) for classic local safety members.
  - e. Section 20692 (Employer Paid Member Contributions Converted to Payrate During the Final Compensation Period) for classic local miscellaneous members in the following groups:

BART Police Officers' Association  
BART Police Management Association
  - f. Section 20965 (Credit for Unused Sick Leave).
  - g. Section 21574 (Fourth Level of 1959 Survivor Benefits) for local safety members only.
  - h. Section 21020.5 (Public Service Credit for California Senate Fellows, Assembly, Fellowship, Executive Fellowship, or Judicial Administration Fellowship Programs) for local miscellaneous members only.
  - i. Section 21022 (Public Service Credit for Periods of Lay-Off) for local miscellaneous members only.
  - j. Section 21023.5 (Public Service Credit for Peace Corps, AmeriCorps VISTA, or AmeriCorps Service) for local miscellaneous members only.

k. Section 20516 (Employees Sharing Additional Cost):

From and after the effective date of this amendment to contract, 6% for classic local miscellaneous members, 8% for classic local safety members and 2% for new local safety members in the Bart Police Managers' Association; and

4% for local miscellaneous members, 8% for classic local safety members and 2% for new local safety members in the Bart Police Officers' Association.

The portion of the employer's contribution that the member agrees to contribute from his or her compensation, over and above the member's normal contribution ("Cost Sharing Percentage"), shall not exceed the Employer Normal Cost Rate, as that rate is defined in the CalPERS Actuarial Valuation for the relevant fiscal year. If the Cost Sharing Percentage will exceed the relevant Employer Normal Cost Rate, the Cost Sharing Percentage shall automatically be reduced to an amount equal to, and not to exceed, the Employer Normal Cost Rate for the relevant fiscal year.

11. Public Agency, in accordance with Government Code Section 20790, ceased to be an "employer" for purposes of Section 20834 effective on July 1, 1978. 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.
12. 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.
13. 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 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.



14. 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.
15. 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

BOARD OF DIRECTORS  
SAN FRANCISCO BAY AREA RAPID  
TRANSIT DISTRICT

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

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

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

Attest:

\_\_\_\_\_  
Clerk