ORDINANCE NO. 09-

AN URGENCY ORDINANCE OF THE CITY COUNCIL OF THE CITY OF COSTA MESA AUTHORIZING AN AMENDMENT TO THE CONTRACT BETWEEN THE CITY OF COSTA MESA AND BOARD OF ADMINISTRATION OF THE CALIFORNIA PUBLIC EMPLOYEES' RETIREMENT SYSTEM.

WHEREAS, due to the current recessionary economic climate, the City will be unable to balance its next fiscal year's budget without exercising significant spending reductions and other alternatives; and

WHEREAS, the City has already suspended all recruiting/hiring activities, including at least 18 full-time positions that are either being held vacant or have been eliminated; and

WHEREAS, the City anticipates the need to further reduce staffing levels; and

WHEREAS, offering a CalPERS Retirement Incentive could create additional vacancies and reduce the number of personnel that may be laid off as a result of reductions in departmental operating budgets; and

WHEREAS, Government Code 20903 allows the City to provide "Two Years Additional Service Credit" to qualifying employees who retire in the event of impending mandatory transfers, demotions or layoffs by amending its contract with CalPERS; and

WHEREAS, in 1992, when the City amended its contract with CalPERS for miscellaneous (non-safety) employees to offer the "Two Years Additional Service Credit" benefit, at that time, the City did not contract with CalPERS for its sworn Police or Fire personnel for retirement benefits; and

WHEREAS, offering the "Two Years Additional Service Credit" benefit requires that the City amend the contract with CalPERS to include the benefit for sworn Police and Fire employees; and

WHEREAS, delay in implementing the Two Years Additional Service Credit benefit contract amendment will cause additional financial hardship to the City and cause additional use of funds needed to maintain an emergency reserve for the city, as well as increase the risk of layoffs occurring.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF COSTA MESA DOES HEREBY ORDAIN AS FOLLOWS:

Section1. That an amendment to the contract between the City Council of the City of Costa Mesa and the Board of Administration, California Public Employees' Retirement System is hereby authorized, a copy of said amendment being attached hereto, marked Exhibit "A," and by such reference made a part hereof as though herein set out in full.

Section 2. The Mayor of the City of Costa Mesa is hereby authorized, empowered, and directed to execute said amendment for and on behalf of said Agency.

Section 3. This ordinance is urgently required to reduce the City's budget deficit.

Section 4. If any section, subsection, clause or phrase or portion of this ordinance is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this ordinance.

The City Council hereby declares that it would have passed this ordinance, and each section, subsection, sentence, clause and phrase or portion thereof, irrespective of the fact that any one or more of the sections, subsections, sentences, clauses, or phrases or portions thereof be declared invalid or unconstitutional.

Section 5. This Ordinance shall take effect and be in full force immediately from and after adoption, and prior to the expiration of fifteen (15) days from its passage shall be published once in the DAILY PILOT, a newspaper of general circulation, printed and published in the City of Costa Mesa.

PASSED AND ADOPTED this ____ day of _____, 2009.

_____
Mayor of the City of Costa Mesa

ATTEST:

_____
City Clerk of the City of Costa Mesa

APPROVED AS TO FORM:

_____
City Attorney

STATE OF CALIFORNIA)
COUNTY OF ORANGE)ss
CITY OF COSTA MESA)

I, Julie Folcik, City Clerk and ex-officio clerk of the City Council of the City of Costa Mesa, hereby certify that the above and foregoing Ordinance No. 09-_____ was introduced and considered section by section at a regular meeting of said City Council held on the 18th day of August, 2009, and thereafter passed and adopted as a whole at said City Council meeting, by the following roll call vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the Seal of the City of Costa Mesa this 19th day of August, 2009.

_____
City Clerk and ex-officio Clerk of the
City Council of the City of Costa Mesa

CalPERS

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 Costa Mesa

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 August 13, 1978, and witnessed August 7, 1978, and as amended effective July 15, 1979, October 25, 1987, October 30, 1992, September 18, 1994, January 4, 1996, June 2, 1998, June 16, 2000, December 31, 2000, May 20, 2001, December 19, 2002 and September 28, 2008 which provides for participation of Public Agency in said System, Board and Public Agency hereby agree as follows:

A. Paragraphs 1 through 16 are hereby stricken from said contract as executed effective September 28, 2008, and hereby replaced by the following paragraphs numbered 1 through 17 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 55 for local fire members and age 50 for local police members.

2. Public Agency shall participate in the Public Employees' Retirement System from and after August 13, 1978 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. Assets heretofore accumulated with respect to members in the local retirement system have been transferred to the Public Employees' Retirement System on September 18, 1994 and applied against the liability for prior service incurred thereunder. That portion of the assets so transferred which represent the accumulated contributions (plus interest thereof) required of the employees under said local system has been credited to the individual membership account of each such employee under the Public Employees' Retirement System.

7. Benefits paid to pensioner or annuitants under the local system on or prior to September 18, 1994 shall be continued and paid at their existing rates by the Public Employees' Retirement System as authorized by Section 20481 of the Government Code.

8. The percentage of final compensation to be provided for local miscellaneous members in employment before and not on or after September 28, 2008 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).

9. The percentage of final compensation to be provided for local miscellaneous members in employment on or after September 28, 2008 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 21354.4 of said Retirement Law (2.5% at age 55 Full).

10. The percentage of final compensation to be provided for each year of credited prior and current service as a local police member shall be determined in accordance with Section 21362.2 of said Retirement Law (3% at age 50 Full).

11. The percentage of final compensation to be provided for each year of credited prior and current service as a local fire member shall be determined in accordance with Section 21363.1 of said Retirement Law (3% at age 55 Full).

12. Public Agency elected and elects to be subject to the following optional provisions:

    a. Section 20042 (One-Year Final Compensation).

    b. Section 20965 (Credit for Unused Sick Leave).

    c. Sections 21624 and 21626 (Post-Retirement Survivor Allowance).

    d. Section 21573 (Third Level of 1959 Survivor Benefits) for local miscellaneous members only.

    e. Section 20903 (Two Years Additional Service Credit).

    f. Section 20938 (Limit Prior Service to Members Employed on Contract Date) for local safety members only.

    g. Section 21536 (Local System Service Credit Included in Basic Death Benefit) for local safety members only.

    h. Section 21427 (Improved Nonindustrial Disability Allowance) for local fire members.

    i. Section 21031 (Public Service Credit for Limited Prior Service) for local miscellaneous members only.

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j. Section 21024 (Military Service Credit as Public Service).

k. Section 21027 (Military Service Credit for Retired Persons).

l. Section 21023.5 (Public Service Credit for Peace Corps, AmeriCorps VISTA, or AmeriCorps Service).

13. Public Agency, in accordance with Government Code Section 20834, shall not be considered an "employer" for purposes of the Public Employees' Retirement Law. Contributions of the Public Agency shall be fixed and determined as provided in Government Code Section 20834, and such contributions hereafter made shall be held by the Board as provided in Government Code Section 20834.

14. 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.

15. 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 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.

16. 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.

17. 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

BY_____
LORI MCGARTLAND, CHIEF
EMPLOYER SERVICES DIVISION
PUBLIC EMPLOYEES' RETIREMENT SYSTEM

CITY COUNCIL
CITY OF COSTA MESA

BY_____
PRESIDING OFFICER

_____
Witness Date

Attest:

_____
Clerk