Council Agenda # _______
Meeting of February 26, 2008

CITY OF BELMONT
CALIFORNIA

# Staff Report

RESOLUTION AUTHORIZING AN AGREEMENT AND ELECTION TO PREFUND OTHER POST EMPLOYMENT BENEFITS (OPEB) WITH CALIFORNIA PUBLIC EMPLOYEES' RETIREMENT SYSTEM (CALPERS) TRUST

Honorable Mayor and Council Members:

**Summary**
The Governmental Accounting Standards Board approved on June 21, 2004, Statement No. 45 – Other Post Employment Benefits (OPEB), which is the accounting standards for future liabilities of additional retiree benefits other than pensions, including retiree health benefits. Because the City provides these benefits for retirees that meet the criteria, the City is required to implement these new reporting standards for fiscal year 2008-2009. The City requested an actuarial report from Bartel Associates, LLC in anticipation of this requirement to identify these estimated future costs. Staff researched options for funding the future costs that were identified in the actuarial report. After reviewing the options with the Finance Commission, staff is recommending pre-funding the Annual Required Contribution (ARC) identified in the actuarial report through a new trust fund created by the California Public Employees' Retirement System. In August 2007, the State of California published a report by the Public Employee Post-Employment Benefits Commission entitled *Funding Pensions & Retiree Health Care for Public Employees.* The recommendations illustrated below are fully consistent with the recommendations made in this report. In fact, our recommendations provide even stronger steps by fully funding the Annual Required Contribution (ARC), which is not required, but is considered highly recommended. This report can be viewed on the City's website and has been discussed in Weekly Updates to the City Council.

**Background and Discussion**

Government Accounting Standards Board (GASB)

On June 21, 2004, GASB approved Statement No. 45 (GASB 45), the Accounting Standards for Other Post Employment Benefits (OPEB). The City is required to implement reporting requirements under GASB 45 beginning next fiscal year 2008-2009. Prior to GASB 45 being published, the City has accounted for retiree healthcare benefits as they were paid (pay-as you-go method). GASB 45 requires that the City account for this promise on an accrual basis (as benefits are earned) which will increase annual reporting costs.

Staff received the required actuarial report from Bartel Associates, LLC in February, 2007 (see attachment E). After analyzing the report, staff presented to the Finance Commission, in April 2007, various options to fund the GASB 45 liability. These options include:

1. Pay as you go method – Payment of retiree health care as costs are incurred which is the current method for accounting. The City would record a liability annually, which would increase every year. (See Attachment F) Not recommended.
2. Pre Funding – Payment of the Annual Required Contribution (ARC) as determined by an actuarial study beginning in fiscal 2009. The City would record no liability as long as it continues to fund the ARC. (See Attachment G). Recommended.
3. Pre Funding Plus – Payment of the Annual Required Contribution as determined by an actuarial study in the year of GASB 45 Implementation in fiscal 2009, along with additional funds. The City would record no liability and would also reflect an asset due to the set-aside if it continues to fund the ARC. (See Attachment H) Not recommended.
4. Pre Funding Minus – Phase in the Annual Required Contribution over five years. The City would make a contribution less than the full ARC and record a smaller liability in the first year. Future years would show an increase in the liability if the City continues to fund at this reduced rate. (See Attachment I) Not recommended.

*CalPERS Trust*
The California Public Employees' Retirement System (CalPERS) formally launched its prefunding plan for retiree health benefits in March 2007, responding to a need by its member agencies. CalPERS has named the trust the *California Employers' Retiree Benefit Trust Fund*, a program that allows public employers to make regular periodic contributions into the trust fund so that the money can be invested and grow. An important point to understand is that, in the future, participating employers in the *Trust* can use investment earnings to pay for OPEB, including retiree health benefits, similar to the CalPERS pension plan in which three out of four dollars paid in benefits come from investment earnings rather than taxpayer dollars and employer contributions.

CalPERS has been administering public pension plans for 75 years with excellent results. Over the past 10 years, pension fund investments have averaged a 9.3% annual rate of return. Management fees have averaged 0.25 % of assets over the past 10 years, well below most commercial investment funds. In fiscal year 2007, the CalPERS pension plan received a rate of return of 19.13% on its investments.

## Discussion
It is important to recognize that this discussion is about making a wise financial decision to “pre-fund” rather than the “pay-as-you-go” method currently being utilized. This discussion is not about the issue of retiree health benefits, since those contracts have already been established. All benefits remain the same with no increase in benefits as a result of pre-funding. The discussion is centered on how to more wisely plan for the obligation of the City to pay for retiree health benefits by using investment earnings to decrease the use of taxpayer dollars. Prior to the GASB 45 Statement, the City, like most other public agencies, used a pay-as-you-go method of funding retiree benefits by paying the current cost of retiree health care premiums in any given fiscal year. However, this method does not make adequate provisions for future retirees, and the City

accrues a growing deficit with respect to those retirees that can be expected to increase as a result of both an ever-increasing retiree population and increased benefit costs. If the cost of fully funding the benefit is deferred, it will put a greater burden on future budgets. In recognition of this future dilemma, the City needs to continue its policy of being pro-active rather than reactive in its sound fiscal planning.

By choosing to "pre-fund" the obligation, the City is simply transferring funds from the City's portfolio, which is earning an average of 4.5%, to the *Trust* portfolio, which earns an assumed interest rate of 7.75% and quite possibly considerably higher. The result is that the additional yield on investment provides the ability to "buy down" future annual required contributions and at the same time, relieves the City of the requirement to recognize the liability in the annual financial reports.

The City is not required under GASB 45 to fund the OPEB liability. However, if the annual required contribution (ARC) is not pre-funded, the liability will be shown on the City's financial statements. This may cause negative effects to the City's bond rating and credit decisions, which could trickle down to affecting future economic development. While the calculated amounts are only projections of future costs, the projection does represent real costs that the City has committed by contract to pay. Consequently, by prefunding the ARC, the City can take advantage of funding from an entity that historically has an excellent record of investment strategy, generally higher than current inflation rates. While the City's rate of return averages around 4.5% based on Local Agency Investment Fund (LAIF), CalPERS is estimating a 7.75% rate of return. As noted above, CalPERS rate of return last year was above that, at 19.13%. After reviewing the four options available, staff recommends, and the Finance Commission concurs, that the City should implement the planned pre-funding option starting in fiscal year 2008-2009, using the CalPERS new *Trust Fund*. This option models what "best practices" recommends and does not create a liability that needs to be recorded.

Finance Commission Recommendation –
Last April after hearing the recommendation of staff, the Finance Commission unanimously recommended pre-funding the ARC effective with the fiscal year 2008-09 budget.

**General Plan/Vision Statement**
No impact from this report.

**Fiscal Impact**
The fiscal impact would be payment of the ARC, estimated to be $810,000 for 2008-2009, the year of implementation into the CalPERS Trust.

**Public Contact**
Posting of City Council agenda.

**Recommendation**

It is recommended City Council approve the resolution authorizing annual prefunding of the Annual Required Contribution (ARC) effective Fiscal Year 2008-2009 and authorize the City Manager to enter into the Agreement with the CalPERS *California Employers' Retiree Benefit Trust Fund*.

**Alternatives**

1. Take no action
2. Refer back to staff for further information
3. Deny approval

**Attachments**

A. Resolution To Prefund Other Post Employment Benefits through CalPERS and Delegation of Authority to Request Disbursements
B. "Exhibit A" Agreement and Election of the City of Belmont to Prefund Other Post Employment Benefits through CalPERS
C. Certification of OPEB Actuarial Information and Funding Policy
D. Delegation of Authority to Request Disbursements
E. Executive Summary – Bartel Associates, LLC
F. Graph – Pay As You Go method
G. Graph – Pre Funding method
H. Graph – Pre Funding Plus method
I. Graph – Pre Funding Minus method

Respectfully submitted,

| | |
|---|---|
| Thomas Fil | Jack Crist |
| Finance Director | City Manager |

Staff Contact:
Maureen Lennon, Financial Consultant
595-7434
mlennon@belmont.gov

**RESOLUTION NO. ____________**

**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BELMONT TO PREFUND OTHER POST EMPLOYMENT BENEFITS THROUGH CALPERS AND DELEGATION OF AUTHORITY TO REQUEST DISBURSEMENTS**

**WHEREAS,** The Governmental Accounting Standards Board, Statement No. 45 (GASB 45) requires accounting for future liabilities of retiree health benefits; and

**WHEREAS,** Government Code Section 22940 establishes in the State Treasury the Annuitants' Health Care Coverage Fund for the prefunding of health care coverage for annuitants (Prefunding Plan); and

**WHEREAS,** The California Public Employees' Retirement System (CalPERS) Board of Administration (Board) approved the establishment of the Prefunding Plan as a trust fund that functions within the meaning of Section 115 of the Internal Revenue Code as defined by Governmental Accounting Standards Board (GASB) Statement No. 45; and

**WHEREAS,** The City of Belmont elects to participate in the CalPERS Trust for all employees in the following CalPERS coverage groups: Local Miscellaneous members and Local Police Safety members.

**NOW, THEREFORE, BE IT RESOLVED** that the City Council of the City of Belmont:

1) Approves and agrees to adopt the Agreement and Election of the City of Belmont to Prefund Other Post Employment Benefits (OPEB) through CalPERS, a copy of which is attached hereto as Exhibit "A" and is incorporated herein by this reference.

2) The Mayor is authorized to execute the attached agreement on behalf of the City.

3) The City Manager is directed to process the attached agreement with CalPERS and is authorized to take any additional necessary action required to implement this action of the City Council.

4) The City delegates to the incumbents in the position of City Manager and Finance Director the authority to request on behalf of the City disbursements from the Other Post Employment Prefunding Plan and to certify as to the purpose for which the disbursed funds will be used.

* * * * * * * * * * * * * * * * * * * * * * * * * * * * * * * * * * * * * * *

I hereby certify that the foregoing Resolution was duly and regularly passed and adopted by the City Council of the City of Belmont at a regular (or special, if appropriate) meeting thereof held on February 26, 2008 by the following vote:

AYES, COUNCILMEMBERS: ____________________________________________

NOES, COUNCILMEMBERS:____________________________________________

ABSTAIN, COUNCILMEMBERS: ________________________________________

ABSENT, COUNCILMEMBERS:_________________________________________

______________________________
CLERK of the City of Belmont

APPROVED:

______________________________
MAYOR of the City of Belmont

**Exhibit “A”**

**CALIFORNIA EMPLOYER'S RETIREE BENEFIT TRUST PROGRAM ("CERBT")**

# AGREEMENT AND ELECTION OF THE CITY OF BELMONT

# TO PREFUND OTHER POST EMPLOYMENT BENEFITS THROUGH CalPERS

WHEREAS (1) Government Code Section 22940 establishes in the State Treasury the Annuitants' Health Care Coverage Fund for the prefunding of health care coverage for annuitants (Prefunding Plan); and

WHEREAS (2) the California Public Employees' Retirement System (CalPERS) Board of Administration (Board) has sole and exclusive control and power over the administration and investment of the Prefunding Plan (sometimes also referred to as CERBT), the purposes of which include, but are not limited to (i) receiving contributions from participating employers and establishing separate Employer Prefunding Accounts in the Prefunding Plan for the performance of an essential governmental function (ii) investing contributed amounts and income thereon, if any, in order to receive yield on the funds and (iii) disbursing contributed amounts and income thereon, if any, to pay for costs of administration of the Prefunding Plan and to pay for health care costs or other post employment benefits in accordance with the terms of participating employers' plans; and

WHEREAS (3) the City of Belmont (Employer) is a contracting agency under the Public Employees' Medical and Hospital Care Act (PEMHCA) administered by the Board, and desires to participate in the Prefunding Plan upon the terms and conditions set by the Board and as set forth herein; and

WHEREAS (4) Employer may participate in the Prefunding Plan upon (i) approval by the Board and (ii) filing a duly adopted and executed Agreement and Election to Prefund Other Post Employment Benefits (Agreement) as provided in the terms and conditions of the Agreement; and

WHEREAS (5) The Prefunding Plan is a trust fund that is intended to perform an essential governmental function within the meaning of Section 115 of the Internal Revenue Code as an agent multiple-employer plan as defined in Governmental Accounting Standards Board (GASB) Statement No. 43 consisting of an aggregation of single-employer plans, with pooled administrative and investment functions;

NOW, THEREFORE, BE IT RESOLVED THAT EMPLOYER HEREBY MAKES THE FOLLOWING REPRESENTATION AND WARRANTY AND THAT THE BOARD AND EMPLOYER AGREE TO THE FOLLOWING TERMS AND CONDITIONS:

A. Representation and Warranty

Employer represents and warrants that it is a political subdivision of the State of California or an entity whose income is excluded from gross income under Section 115 (1) of the Internal Revenue Code.

B. Adoption and Approval of the Agreement; Effective Date; Amendment

(1) Employer's governing body shall elect to participate in the Prefunding Plan by adopting this Agreement and filing with the CalPERS Board a true and correct original or certified copy of

this Agreement as follows:

Filing by mail, send to: CalPERS Employer Services Division
P.O. Box 942709
Sacramento, CA 94229-2709

Filing in person, deliver to:
CalPERS Mailroom
Attn: Employer Services Division
400 Q Street
Sacramento, CA 95814

(2) Upon receipt of the executed Agreement, and after approval by the Board, the Board shall fix an effective date and shall promptly notify Employer of the effective date of the Agreement.

(3) The terms of this Agreement may be amended only in writing upon the agreement of both CalPERS and Employer, except as otherwise provided herein. Any such amendment or modification to this Agreement shall be adopted and executed in the same manner as required for the Agreement. Upon receipt of the executed amendment or modification, the Board shall fix the effective date of the amendment or modification.

(4) The Board shall institute such procedures and processes as it deems necessary to administer the Prefunding Plan, to carry out the purposes of this Agreement, and to maintain the tax exempt status of the Prefunding Plan. Employer agrees to follow such procedures and processes.

C. Actuarial Valuation and Employer Contributions

(1) Employer shall provide to the Board an actuarial valuation report on the basis of the actuarial assumptions and methods prescribed by the Board. Such report shall be for the Board's use in financial reporting, shall be prepared at least as often as the minimum frequency required by GASB Statement No. 43, and shall be:

(a) prepared and signed by a Fellow or Associate of the Society of Actuaries who is also a Member of the American Academy of Actuaries or a person with equivalent qualifications acceptable to the Board;

(b) prepared in accordance with generally accepted actuarial practice and GASB Statement Nos. 43 and 45; and,

(c) provided to the Board prior to the Board's acceptance of contributions for the valuation period or as otherwise required by the Board.

(2) The Board may reject any actuarial valuation report submitted to it, but shall not unreasonably do so. In the event that the Board determines, in its sole discretion, that the actuarial valuation report is not suitable for use in the Board's financial statements or if Employer fails to provide a required actuarial valuation, the Board may obtain, at Employer's expense, an actuarial valuation that meets the Board’s financial reporting needs. The Board may recover from Employer the cost of obtaining such actuarial valuation by billing and collecting from Employer or by deducting the amount from Employer's account in the Prefunding Plan.

(3) Employer shall notify the Board of the amount and time of contributions which contributions shall be made in the manner established by the Board.

(4) Employer contributions to the Prefunding Plan may be limited to the amount necessary to fully fund

Employer's actuarial present value of total projected benefits, as supported by the actuarial valuation acceptable to the Board. As used throughout this document, the meaning of the term "actuarial present value of total projected benefits" is as defined in GASB Statement No. 45. If Employer’s contribution causes its assets in the Prefunding Plan to exceed the amount required to fully fund the actuarial present value of total projected benefits, the Board may refuse to accept the contribution.

(5) Any Employer contribution will be at least $5000 or be equal to Employer's Annual Required Contribution as that term is defined in GASB Statement No. 45. Contributions can be made at any time following the seventh day after the effective date of the Agreement provided that Employer has first complied with the requirements of Paragraph C.

D. Administration of Accounts, Investments, Allocation of Income

(1) The Board has established the Prefunding Plan as an agent plan consisting of an aggregation of single-employer plans, with pooled administrative and investment functions, under the terms of which separate accounts will be maintained for each employer so that Employer's assets will provide benefits only under employer's plan.

(2) All Employer contributions and assets attributable to Employer contributions shall be separately accounted for in the Prefunding Plan (Employer’s Prefunding Account).

(3) Employer’s Prefunding Account assets may be aggregated with prefunding account assets of other employers and may be co-invested by the Board in any asset classes appropriate for a Section 115 Trust.

(4) The Board may deduct the costs of administration of the Prefunding Plan from the investment income or Employer’s Prefunding Account in a manner determined by the Board.

(5) Investment income shall be allocated among employers and posted to Employer’s Prefunding Account as determined by the Board but no less frequently than annually.

(6) If Employer's assets in the Prefunding Plan exceed the amount required to fully fund the actuarial present value of total projected benefits, the Board, in compliance with applicable accounting and legal requirements, may return such excess to Employer.

E. Reports and Statements

(1) Employer shall submit with each contribution a contribution report in the form and containing the information prescribed by the Board.

(2) The Board shall prepare and provide a statement of Employer’s Prefunding Account at least annually reflecting the balance in Employer's Prefunding Account, contributions made during the period and income allocated during the period, and such other information as the Board determines.

F. Disbursements

(1) Employer may receive disbursements not to exceed the annual premium and other costs of post employment healthcare benefits and other post employment benefits.

(2) Employer shall notify CalPERS in writing in the manner specified by CalPERS of the persons authorized to request disbursements from the Prefunding Plan on behalf of Employer.

(3) Employer's request for disbursement shall be in writing signed by Employer's authorized representative, in accordance with procedures established by the Board. The Board may require that

Employer certify or otherwise establish that the monies will be used for the purposes of the Prefunding Plan.

(4) Requests for disbursements that satisfy the requirements of paragraphs (2) and (3) that are received on or after the first of a month will be processed by the 15th of the following month. (For example, a disbursement request received on or between March 1st and March 31st will be processed by April 15th; and a disbursement request received on or between April 1st and April 30th will be processed by May 15th.)

(5) CalPERS shall not be liable for amounts disbursed in error if it has acted upon the instruction of an individual authorized by Employer to request disbursements. In the event of any other erroneous disbursement, the extent of CalPERS' liability shall be the actual dollar amount of the disbursement, plus interest at the actual earnings rate but not less than zero.

(6) No disbursement shall be made from the Prefunding Plan which exceeds the balance in Employer's Prefunding Account.

G. Costs of Administration

Employer shall pay its share of the costs of administration of the Prefunding Plan, as determined by the Board.

H. Termination of Employer Participation in Prefunding Plan

(1) The Board may terminate Employer's participation in the Prefunding Plan if:

(a) Employer gives written notice to the Board of its election to terminate;

(b) Employer ceases to be a PEMHCA participant;

(c) The Board finds that Employer fails to satisfy the terms and conditions of this Agreement or of the Board's rules or regulations.

(2) If Employer's participation in the Prefunding Plan terminates for any of the foregoing reasons, all assets in Employer's Prefunding Account shall remain in the Prefunding Plan, except as otherwise provided below, and shall continue to be invested and accrue income as provided in Paragraph D.

(3) After Employer's participation in the Prefunding Plan terminates, Employer may not make contributions to the Prefunding Plan.

(4) After Employer's participation in the Prefunding Plan terminates, disbursements from Employer's Prefunding Account may continue upon Employer's instruction or otherwise in accordance with the terms of this Agreement.

(5) After thirty-six (36) months have elapsed from the effective date of this Agreement:

(a) Employer may request a trustee to trustee transfer of the assets in Employer's Prefunding Account. Upon satisfactory showing to the Board that the transfer will satisfy applicable requirements of the Internal Revenue Code and the Board's fiduciary duties, then the Board shall effect the transfer within one hundred twenty (120) days. The amount to be transferred shall be the amount in the Employer's Prefunding Account as of the disbursement date and shall include investment earnings up to the investment earnings allocation date immediately preceding the disbursement date. In no event shall the investment earnings allocation date precede the transfer by more than 120 days.

(b) Employer may request a disbursement of the assets in Employer’s Prefunding Account. Upon satisfactory showing to the Board that all of Employer's obligations for payment of post employment health care benefits and other post employment benefits and reasonable administrative costs of the Board have been satisfied, then the Board shall effect the disbursement within one hundred twenty (120) days. The amount to be disbursed shall be the amount in the Employer’s Prefunding Account as of the disbursement date and shall include investment earnings up to the investment earnings allocation date immediately preceding the disbursement date. In no event shall the investment earnings allocation date precede the disbursement by more than 120 days.

(6) After Employer’s participation in the Prefunding Plan terminates and at such time that no assets remain in Employer’s Prefunding Account, this Agreement shall terminate.

(7) If, for any reason, the Board terminates the Prefunding Plan, the assets in Employer’s Prefunding Account shall be paid to Employer after retention of (i) amounts sufficient to pay post employment health care benefits and other post employment benefits to annuitants for current and future annuitants, and (ii) amounts sufficient to pay reasonable administrative costs of the Board.

(8) If Employer ceases to exist but Employer’s Prefunding Plan continues to exist and if no provision has been made by Employer for ongoing payments to pay post employment health care benefits and other post employment benefits to annuitants for current and future annuitants, the Board is authorized to and shall appoint a third party administrator to carry out Employer's Prefunding Plan. Any and all costs associated with such appointment shall be paid from the assets attributable to contributions by Employer.

(9) If Employer should breach the representation and warranty set forth in Paragraph A., the Board shall take whatever action it deems necessary to preserve the tax-exempt status of the Prefunding Plan.

<u>I. General Provisions</u>

(1) Books and Records.
Employer shall keep accurate books and records connected with the performance of this Agreement. Employer shall ensure that books and records of subcontractors, suppliers, and other providers shall also be accurately maintained. Such books and records shall be kept in a secure location at the Employer's office(s) and shall be available for inspection and copying by CalPERS and its representatives at any time.

(2) Audit.

(a) During and for three years after the term of this Agreement, Employer shall permit the Bureau of State Audits, CalPERS, and its authorized representatives, and such consultants and specialists as needed, at all reasonable times during normal business hours to inspect and copy, at the expense of CalPERS, books and records of Employer relating to its performance of this Agreement.

(b) Employer shall be subject to examination and audit by the Bureau of State Audits, CalPERS, and its authorized representatives, and such consultants and specialists as needed, during the term of this Agreement and for three years after final payment under this Agreement. Any examination or audit shall be confined to those matters connected with the performance of this Agreement, including, but not limited to, the costs of administering this Agreement. Employer shall cooperate fully with the Bureau of State Audits, CalPERS, and its authorized representatives, and such consultants and specialists as needed, in connection with any examination or audit. All adjustments, payments, and/or reimbursements determined to be necessary by any examination or audit shall be made promptly by the appropriate party.

(3) Notice.

(a) Any notice, approval, or other communication required or permitted under this Agreement will be given in the English language and will be deemed received as follows:

1. Personal delivery. When personally delivered to the recipient. Notice is effective on delivery.

2. First Class Mail. When mailed first class to the last address of the recipient known to the party giving notice. Notice is effective three delivery days after deposit in a United States Postal Service office or mailbox.

3. Certified mail. When mailed certified mail, return receipt requested. Notice is effective on receipt, if delivery is confirmed by a return receipt.

4. Overnight Delivery. When delivered by an overnight delivery service, charges prepaid or charged to the sender's account, Notice is effective on delivery, if delivery is confirmed by the delivery service.

5. Telex or Facsimile Transmission. When sent by telex or fax to the last telex or fax number of the recipient known to the party giving notice. Notice is effective on receipt, provided that (i) a duplicate copy of the notice is promptly given by first-class or certified mail or by overnight delivery, or (ii) the receiving party delivers a written confirmation of receipt. Any notice given by telex or fax shall be deemed received on the next business day if it is received after 5:00 p.m. (recipient's time) or on a non-business day.

6. E-mail transmission. When sent by e-mail using software that provides unmodifiable proof (i) that the message was sent, (ii) that the message was delivered to the recipient's information processing system, and (iii) of the time and date the message was delivered to the recipient along with a verifiable electronic record of the exact content of the message sent. Addresses for the purpose of giving notice are as shown in Paragraph B.(1) of this Agreement.

(b) Any correctly addressed notice that is refused, unclaimed, or undeliverable because of an act or omission of the party to be notified shall be deemed effective as of the first date that said notice was refused, unclaimed, or deemed undeliverable by the postal authorities, messenger or overnight delivery service.

(c) Any party may change its address, telex, fax number, or e-mail address by giving the other party notice of the change in any manner permitted by this Agreement.

(d) All notices, requests, demands, amendments, modifications or other communications under this Agreement shall be in writing. Notice shall be sufficient for all such purposes if personally delivered, sent by first class, registered or certified mail, return receipt requested, delivery by courier with receipt of delivery, facsimile transmission with written confirmation of receipt by recipient, or e-mail delivery with verifiable and unmodifiable proof of content and time and date of sending by sender and delivery to recipient. Notice is effective on confirmed receipt by recipient or 3 business days after sending, whichever is sooner.

(4) Modification

This Agreement may be supplemented, amended, or modified only by the mutual agreement of the parties. No supplement, amendment, or modification of this Agreement shall be binding unless it is in writing and signed by the party to be charged.

(5) Survival

All representations, warranties, and covenants contained in this Agreement, or in any instrument, certificate, exhibit, or other writing intended by the parties to be a part of their Agreement shall survive the termination of this Agreement until such time as all amounts in Employer's Prefunding Account have been disbursed.

(6) Waiver

No waiver of a breach, failure of any condition, or any right or remedy contained in or granted by the provisions of this Agreement shall be effective unless it is in writing and signed by the party waiving the breach, failure, right, or remedy. No waiver of any breach, failure, right, or remedy shall be deemed a waiver of any other breach, failure, right, or remedy, whether or not similar, nor shall any waiver constitute a continuing waiver unless the writing so specifies.

(7) Necessary Acts, Further Assurances

The parties shall at their own cost and expense execute and deliver such further documents and instruments and shall take such other actions as may be reasonably required or appropriate to evidence or carry out the intent and purposes of this Agreement.

A majority vote of Employer's Governing Body at a public meeting held on the 26th[h] day of the month of February,2008, authorized entering into this Agreement.

Signature of the Presiding Officer: ______________________________

Printed Name of the Presiding Officer: Warren Lieberman, Mayor

Name of Governing Body: City of Belmont City Council

Name of Employer: City of Belmont

Date: ______________________

BOARD OF ADMINISTRATION
CALIFORNIA PUBLIC EMPLOYEES' RETIREMENT SYSTEM

BY______________________________
ACTUARIAL AND EMPLOYER SERVICES BRANCH
CALIFORNIA PUBLIC EMPLOYEES' RETIREMENT SYSTEM

| To be completed by CalPERS |
|---|

The effective date of this Agreement is: ___________________________